United Nations E/C.19/2007/5

# Economic and Social Council

Distr.: General
9 March 2007

Original: English

**Permanent Forum on Indigenous Issues**
**Sixth session**
New York, 14-25 May 2007
Item 9 of the provisional agenda*
**Future work of the Forum, including emerging issues**

## Analysis and state of implementation of the recommendations of the Permanent Forum at its fourth session

*Summary*

At its fifth session, the Permanent Forum decided to extend the mandate of the special rapporteurs, Victoria Tauli-Corpuz and Wilton Littlechild, in order that they might deal with the recommendations aimed at rationalization, clustering and avoiding duplication made at previous sessions of the Forum (E/2006/43, para. 145).

The present report was prepared in accordance with the above decision of the Forum.

* E/C.19/2007/1.

07-26618 (E) 270307

# I. Introduction

1. The present document is in follow-up to a similar document, entitled "Analysis and state of implementation of recommendations of the Permanent Forum on Indigenous Issues" at its first to third sessions (E/C.19/2006/9), prepared by the Special Rapporteurs to the fifth session of the Forum in May 2006.

2. The present document also builds on the reports of the secretariat of the Forum and reports submitted from the United Nations system, some Governments and indigenous organizations.

3. The present document continues the analysis of recommendations, focusing on those of the fourth session, held in 2005, in order to assist the rationalization and follow-up of some recommendations.[1] At its fourth session, the Forum made in total 140 recommendations in the category "Matters brought to the attention of the Economic and Social Council". An introductory phrase used by the Forum in its annual report states that "the Forum has identified the proposals, objectives, recommendations and areas of possible future action set out below and, through the Council, recommends that States, United Nations system and intergovernmental organizations, indigenous peoples, the private sector and non-governmental organizations assist in their realization". These recommendations are mainly addressed to the United Nations system, regional intergovernmental organizations, Governments and indigenous peoples' organizations. On the basis of the state of implementation provided in the database prepared by the secretariat of the Forum (http://www.un.org/esa/socdev/unpfii/en/recommendations.htm), as at February 2007, of 140 recommendations, 14 have been completed and 73 are in the process of implementation. There is no information regarding the status of 53 recommendations.

4. The Forum made many more recommendations at its fourth session than it did at previous sessions. From its first to third sessions, the Forum made 294 recommendations in all.

5. An additional group of recommendations has arisen from the international expert workshops held on specific issues following decisions of the Forum. For the period under the review, this includes four workshops: (a) on data collection and disaggregation, held in 2004; (b) on free, prior and informed consent, held in 2005; (c) on the Millennium Development Goals, indigenous participation and good governance, held in 2006; and (d) on the Convention on Biological Diversity's international regime on access and benefit-sharing and indigenous peoples' rights, held in 2007. Although not all of the recommendations of the workshops have been included by the Forum in its recommendations due to the volume and length of recommendations, it is important to see how the recommendations from those workshops can be implemented. The report of the 2007 workshop had not yet been considered by the Forum as at the issuing of the present document.

6. The secretariat of the Forum provides a database on the recommendations (see www.un.org/esa/socdev/unpfii) based on information received from United Nations agencies, funds and programmes, Governments and indigenous organizations. For

[1] The implementation of recommendations made by the Permanent Forum at its fifth session will be assessed after the required deadline for the submission of the present report and thus will have to be taken into account by the Forum after the conclusion of its sixth session.

the Forum's fourth session, the secretariat prepared an overview of developments on mandated areas and ongoing priorities and themes (E/C.19/2005/8). This report covered:

(a) The contributions of the United Nations system, including contributions by individual agencies and the Inter-Agency Support Group on Indigenous Issues;

(b) Activities of the members of the Forum;

(c) Activities of the secretariat in support of the mandate of the Forum, including follow-up to the recommendations.

7. The members of the Inter-Agency Support Group have also provided their own views on how to strengthen the work of the Forum within the United Nations system, including suggestions on how to increase possibilities for implementing the recommendations.

8. The written submissions to the Forum by the various United Nations bodies, agencies and funds and Governments describe their policies, programmes and projects related to indigenous peoples' issues and how they have implemented recommendations from the Forum that are addressed to them specifically or other work they do related to indigenous peoples. An average of 30 written contributions was submitted to each session of the Forum. For the fourth session, 15 were from the United Nations system, while 3 were from Governments and 1 from the Forum's members. The low number of submissions from Governments and indigenous non-governmental organizations is at times compensated by their active participation in the sessions and the more than 50 side-events organized during the session.

## II. Analysis of recommendations

9. At its fourth session, the Forum's special theme focused on the theme "the Millennium Development Goals and indigenous peoples: redefining the Goals". A significant number of recommendations of the fourth session focused on the Millennium Development Goals. These recommendations can be seen in two categories: one addresses substance and the other, processes. The first category brings in indigenous perspectives in each mandated area of the Forum, whether it is regarding education, the environment, health, human rights or economic and social development with particular relevance to the achievement of the Millennium Development Goals. This category of recommendations articulates in depth and substance what the Millennium Development Goals mean for indigenous peoples and what specific action the United Nations system and other intergovernmental actors and States should take. The second category of recommendations addresses processes, meaning how to ensure that indigenous perspectives can be heard and taken into account. In this regard, the Forum has identified free, prior and informed consent as an important principle and also a methodology. The Forum also identified elements of genuine partnerships in any matters affecting indigenous peoples directly or indirectly. Indigenous peoples' understandings of development, for example, can be partly or completely different from that of the dominant mainstream development model and the Forum clearly promotes the respect of indigenous visions of development. In the recommendations on the Millennium Development Goals, the Forum firmly indicated that a shift of the development

paradigm is needed in order to integrate indigenous perspectives of development, although this may be challenging.

10. It should also be noted that a number of recommendations are made annually on ongoing priorities and themes addressing human rights, indigenous women and children and youth, data collection and disaggregation, and free, prior and informed consent. Some of these and other recommendations may seem to be repetitive, but this needs to be analysed and understood at two levels. On the one hand, recommendations on principles such as equality, non-discrimination and the call for the wider ratification of international human rights standards to protect indigenous peoples' human rights must be reiterated. On the other hand, the repetition shows the status of non-implementation of earlier recommendations, and the Forum decides to reiterate recommendations with a view to stressing their importance and relevance. For example, the Forum's recommendation that the World Health Organization, in conjunction with indigenous health providers, undertake a study on the prevalence and causes of suicide among indigenous youth, and efforts being undertaken, including culturally based approaches, to address suicide prevention and the promotion of mental health and wellness, is repeated at its second and fourth sessions. In the fourth session, the Forum reiterates the recommendations contained in its report on its second session and strongly advises positive consideration of the Global Fund to Fight AIDS, Tuberculosis and Malaria and the Joint United Nations Programme on HIV/AIDS joining the Inter-Agency Support Group.

## III. Status of implementation of recommendations

11. In terms of generating data and information on the implementation of recommendations, many new initiatives have been undertaken and made known to the Forum. The written submissions of the United Nations system are additional sources of information on what these bodies are doing to address indigenous issues. There are still recommendations for developing policy guidelines to work with indigenous peoples that have not been followed by the concerned agencies. This may be due to the fact that any policy development work would take considerable time to ensure broader and extensive consultations at all levels. Some other recommendations require substantive preparation and resources by agencies or institutions and have therefore taken time to implement. One example is the preparation of a report on the state of the world's indigenous peoples recommended by the Forum at its first session. It was only possible to start the preparatory work in 2006 and the report is due to be published in 2008. Similarly, a dialogue between the Forum's members and international financial institutions recommended at the first session only occurred in 2005 and in 2006.

12. Many recommendations, especially those that require short and medium-term time frames, have been implemented. Some activities, however, have not been fully reported. The source of information for reports and the database prepared by the secretariat is mainly written submissions. The oral presentations made from the floor during the plenary meetings of the Forum have not yet been included in the analysis. For instance, only three to nine Governments made written submissions. Considering that almost all the States members of the Economic and Social Council are present at the plenary meetings of the Forum and some of them made statements, it may be useful to review these speeches or the daily press releases issued by the Department of Public Information on Forum debates to take full note of what was

reported. It should be noted, however, that it is more practical in the field of public policy to make written submissions on progress made on indigenous issues.

13. Some of the recommendations on enhancing indigenous peoples' participation in intergovernmental and governmental processes are being implemented. For example, numerous invitations have been received by members of the Forum from United Nations entities, including an invitation to be observers at the Governing Council of the International Fund for Agricultural Development (IFAD). Indigenous persons have also been included in the advisory bodies of a number of United Nations entities. Additional voluntary funds have been established by the World Intellectual Property Organization and the Convention on Biological Diversity to facilitate the participation of indigenous persons in various intergovernmental processes.

14. Recommendations addressed to indigenous organizations are seen as too broad and general for implementation, while some of the recommendations have not taken into account the substantive technical and financial resources needed in order for grass-roots indigenous organizations to implement them.

15. In relation to capacity-building processes, some agencies have conducted training sessions for their staff and other interested parties. This practice should be continued by agencies and extend to their field offices.

16. It should be noted that apart from the Inter-American Development Bank, regional intergovernmental institutions have not yet submitted their contributions to the Forum. This was also one of the rationales for why the Forum decided to hold two half-day discussions of regional focus for the fifth and sixth sessions, one on Africa and one on Asia, so as to draw out the experiences of the regional organizations, Governments and indigenous organizations.

## IV. Facilitating factors for the implementation of recommendations

17. Facilitating factors include the following:

(a) Some United Nations bodies are already implementing programmes specifically targeted at indigenous peoples and some have written policies on indigenous peoples. The recommendations of the Forum have provided further justification for continuing, expanding or replicating such activities;

(b) The Forum's clear mandate to provide expert advice and facilitate coordination and integration of indigenous issues has given more weight to the recommendations emerging from its sessions. Some of these recommendations have their origin in several other processes, such as the Working Group on Indigenous Populations or the working group of the Convention on Biological Diversity on article 8 (j). However, those groups do not have mandates similar to that of the Forum. Since it is expected that United Nations entities will attend subsequent sessions of the Forum, it is a good practice for them to report, and to include in their report some analysis, on which recommendations have been implemented and which have not and for what reason;

(c) The role played by the secretariat of the Forum in providing United Nations bodies with the final reports and recommendations that are specifically

addressed to each body, including follow-up and support, especially in the case of joint activities, has contributed to the implementation of several recommendations;

(d) Active engagement and commitment of the focal point in each United Nations body to pursue the implementation of the recommendations assigned to her or his agency and partnerships created between the Forum and others are key factors for facilitating the implementation of programmes and projects;

(e) The moral and financial support coming from members of the Inter-Agency Support Group, especially if two or more members collaborate to implement a recommendation, can be another facilitating factor;

(f) Indigenous peoples' issues are cutting-edge issues that challenge dominant paradigms and thus are found challenging since they entail developing new discourses and implementing development and human rights work in non-traditional ways. Some United Nations and government personnel have successfully addressed these challenges;

(g) A number of indigenous leaders or non-indigenous advocates, whether members of the Forum or not, work closely with some United Nations bodies that have engaged them to provide advice and support in implementing recommendations;

(h) If additional resources are needed for implementation, some United Nations bodies allot money to ensure the implementation of recommendations considered important. Despite the fact that many United Nations agencies, funds and programmes have a focal point on indigenous issues, this is often only one of their tasks. Support from their institutions, coupled with the active engagement of Forum members in providing advice and support, have contributed to successful implementation.

## V. Constraints or obstacles to the implementation of recommendations

18. Constraints or obstacles include:

(a) Some recommendations require substantial financial resources that are not included in the budget of agencies, programmes and funds. These recommendations remain unimplemented;

(b) Many of the recommendations that call for studies to be undertaken have not yet been implemented. The lack of financial and human resources within the relevant bodies to carry out such projects is the likely reason for the non-implementation of some recommendations;

(c) Lack of awareness on indigenous peoples and their issues among staff, senior management officials or governing bodies who make key decisions is another constraint;

(d) Indigenous issues remain a low or non-priority within many United Nations bodies and Governments;

(e) Lack of capacity to implement the recommendations on the part of some bodies is another constraint. Most often, the focal points on indigenous issues have

numerous other competing responsibilities. As a result, they are not in a position to adequately promote the implementation of recommendations addressed to their institutions;

(f) Indigenous peoples' issues challenge dominant paradigms and ways of doing things, which may be a source of discomfort for some United Nations staff and also for government officials.

## VI. Conclusions and recommendations

19. **The Forum's high authority and its engagement in addressing the Millennium Development Goals and indigenous peoples since its fourth session have significantly contributed to the shifting of approaches to development, the formulation of conceptual frameworks, policies and guidelines and the creation of projects concerning indigenous peoples.**

20. **The Forum is able to carry out its mandate by identifying priority recommendations that should be implemented and special themes for its sessions. The task of choosing which expert workshops will enjoy support from the regular budget is not easy. This is a fine balancing act, which must consider the interests of indigenous peoples, the United Nations programmes, agencies and funds and Member States. The active participation of many representatives of United Nations programmes, agencies and funds, Governments and indigenous peoples' representatives in the annual expert workshops of the Forum is an indication of the interest of all parties in coming up with constructive solutions to address these issues.**

21. **The choice of special themes for the sessions, including themes on indigenous children and youth, indigenous women and the Millennium Development Goals, was crucial. The choice to start with the most vulnerable sectors among indigenous peoples gave the right signal to all actors, Governments, the United Nations system and indigenous peoples. The recommendations that emerged from these processes were aligned with the priorities of these actors. This contributed to the positive atmosphere that has prevailed in the sessions of the Forum.**

22. **The role played by the Inter-Agency Support Group, which now includes 30 intergovernmental entities among its members, in terms of pursuing further discussions on how to implement the recommendations and how to strengthen the relationship between the Forum and the Group, contributed positively to the work of the Forum. The Group's substantial contributions in the areas of elaborating and disseminating more widely the issues being discussed helped further the implementation of recommendations.**

23. **Developing more effective partnerships between indigenous peoples and other development actors is one way to ensure a better implementation of the recommendations. The recommendations of the workshop on partnership-building held in 2006 in Nuuk should guide these efforts (E/C.19/2006/4/Add.2).**

24. **The secretariat's database of the Forum's recommendations has proven a very useful tool for monitoring the status and progress of the implementation of recommendations. It should be noted that the information on the status of implementation is provided mostly by United Nations system agencies, funds**

and programmes and, in some cases, by a few Governments in their annual reports to the Forum. The indigenous peoples' organizations usually gave their evaluation of the implementation status from the floor; this has not always been systematically processed or properly analysed. The indigenous caucuses usually submit their recommendations to the Forum's members, who, in turn, try to reflect them in the Forum's final recommendations. With a view to fully and effectively engaging indigenous peoples in the implementation of the Forum's recommendations, agencies, funds and programmes are encouraged to consult indigenous peoples during the session before making their recommendations to the Forum.

25. More Governments and indigenous peoples' organizations should be encouraged to submit written reports on how they have implemented the recommendations addressed to them, including a description and analysis of facilitating and hindering factors and recommendations on how to address obstacles.

26. Indigenous peoples' organizations should be encouraged to engage in their own monitoring of the implementation of Forum recommendations to the United Nations system and others at the local, country and regional levels. Reports may be submitted to the Forum by indigenous peoples' organizations in order to inform the Forum's understanding of the level of implementation of its recommendations.

27. In the past five years, there has been a noticeable increase in the participation of United Nations and other intergovernmental entities in the sessions and expert workshops of the Forum. The participation of such treaty bodies as the Committee on the Rights of the Child is important because it links the work done by treaty bodies with that of such bodies as the United Nations Children's Fund (UNICEF) and other agencies dealing with children's issues. The participation of the European Council, the Economic Commission for Latin America and the Caribbean and the Asian Development Bank provides more regional perspectives, which the Forum needs to better understand, since its influence must reach down to the regional, national and local levels. Regionally based agencies and intergovernmental organizations are encouraged to participate further in the session.

28. It has been observed that there is still some resistance to suggestions that three or more United Nations bodies should work together on joint projects in specific areas so that more positive experiences in terms of complementarity and building synergies can be seen. This would ensure that indigenous peoples are not overlooked owing to turf wars between development agencies.

29. The Forum secretariat's efforts to prepare annual overview reports, the *Message Stick* (the Forum's quarterly newsletter) and the database on the implementation of recommendations should be sustained. The secretariat should also review speeches delivered during Forum sessions and note references made to the implementation of recommendations, which should be added to information provided in written submissions.

30. The Inter-Agency Support Group should continue to play the role of analysing Forum recommendations and making suggestions on how best to ensure their implementation by the appropriate bodies. This should include

**proposals on how the recommendations should be packaged and information that indigenous peoples can use to influence decisions within the United Nations system.**

31. **It would be useful if the Forum's members, in cooperation with agencies and indigenous peoples' organizations, could strengthen efforts to reduce the number of recommendations at the annual sessions.**

32. **In terms of furthering the discourse on and practice of holistic self-determined development for indigenous peoples, there should be more dialogue among indigenous peoples and between them and intergovernmental and governmental bodies, so as to further refine concepts and reach agreements on how recommendations can better be implemented.**

United Nations E/C.19/2007/6

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Distr.: General
9 March 2007

Original: English

**Permanent Forum on Indigenous Issues**
**Sixth session**
New York, 14-25 May 2007
Item 9 of the provisional agenda*
**Future work of the Forum, including emerging issues**

## Implementation of the human rights mandate of the Permanent Forum on Indigenous Issues**

*Summary*

The present report is submitted in accordance with paragraph 163 of the report of the Permanent Forum on Indigenous Issues on its fifth session. It contains an overview of United Nations efforts in the field of human rights in cooperation with indigenous peoples and outlines the work of the Permanent Forum and possible future work in this area, within its mandate.

* E/C.19/2007/1.

** The submission of the present document was delayed in order to ensure the inclusion of the most recent information.

07-26624 (E) 300307

# I. Introduction

1. The Permanent Forum serves as an advisory body to the Economic and Social Council with a mandate to discuss indigenous issues within the areas of expertise of the Council relating to economic and social development, culture, the environment, education, health and human rights. In so doing the Forum shall:

(a) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council;

(b) Raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system;

(c) Prepare and disseminate information on indigenous issues.

2. As human rights is clearly one of its mandated areas, it is incumbent on the Forum to fulfil its role of providing advice, raising awareness and disseminating information on the human rights of indigenous peoples.

3. The Forum's mandate compels it to address the human rights issues of indigenous peoples in a holistic manner. This should not be conceptually difficult as its mandated areas can logically be translated into political, economic, social and cultural rights. The Forum as a new body is creatively developing the implementation of its mandate on human rights in a more comprehensive manner. It is mindful of the fact that there are existing organs and bodies of the United Nations which have the primary mandates to deal with this issue.

4. It is still a sad reality that indigenous peoples suffer egregious violations of their basic human rights and fundamental freedoms and justice for many of them remains illusive at the national, regional and global levels. Even where there are laws and policies on indigenous peoples' rights, there is a big gap between policy and implementation. The compliance of many Governments with their international human rights obligations remains at a low level. Existing complaint mechanisms and special procedures in the United Nations are still not popularly known and therefore are very much underutilized by indigenous peoples.

5. Indigenous peoples' representatives, in cooperation with supportive Governments, worked for more than 20 years to formulate and conclude a United Nations Declaration on the Rights of Indigenous Peoples. The deferral of the adoption of this instrument by the General Assembly at its session in 2006 is a testimony to the fact that indigenous peoples' inherent and collective human rights are still the least understood and most difficult issues for some Governments to deal with. This is a serious challenge for the whole United Nations system. The Permanent Forum, being the highest body in the United Nations dealing with indigenous peoples' issues, must rise up to this challenge.

6. The establishment of the Human Rights Council and its adoption of the United Nations Declaration on the Rights of Indigenous Peoples as one of its first actions, the establishment and adoption of the Programme of Action of the Second International Decade of the World's Indigenous People, the ongoing United Nations reform, the deferral of the adoption of the Declaration by the General Assembly and the uncertain fate of the Working Group on Indigenous Populations all provide challenges and opportunities for the Forum.

7. The Forum at its fifth session decided "to appoint special rapporteurs to prepare reports and recommendations on how it can implement its human rights mandate without duplicating the work of other human rights bodies and mechanisms and on how it can coordinate and complete its work on human rights and to report to the Permanent Forum at its next session". The present report is submitted in accordance with that decision.

8. The first part of the present report is an overview of the engagement of indigenous peoples with the United Nations system and how the United Nations has addressed indigenous peoples' human rights; the second part reviews and analyses how the Forum has implemented its mandate on human rights to date; and the last part deals with the challenges and prospects for the Forum towards enhancing the implementation of its human rights mandate.

## II. Engagement of indigenous peoples with the United Nations system

9. The first time that indigenous peoples went to Geneva to raise their issues before the League of Nations was in 1923. It was a delegation of the Six Nations of the Iroquois led by Cayuga Chief Deskaheh. He was not received by the League and he died without accomplishing his mission of reporting the violations of their rights. A similar trip was organized by a Maori religious leader, W. T. Ratana, in 1925 to protest the breaking of the Treaty of Waitangi by the Government of New Zealand. Like Chief Deskaheh, he was denied access to the League of Nations.

10. The first United Nations agency that did a study on the situation of indigenous peoples, particularly indigenous workers, is the International Labour Organization. It was done in the 1950s and revealed the dire situation of exploitation and forced labour among the miners, most of whom were indigenous peoples, in a number of Latin American countries. That led to the adoption in 1957 of ILO Convention No. 107 (Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries). The Convention was heavily criticized by indigenous peoples for its assimilationist approach. To rectify that weakness, ILO adopted in 1989 Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. It has now been ratified by 19 countries. Some indigenous peoples in the ratifying countries successfully used it and its complaint procedure to make their issues more visible and to bring about changes in their constitutions and laws.

11. In the 1960s and 1970s the indigenous peoples' movements in the Americas and the Caribbean, the Arctic, Australia, New Zealand, the Philippines and Bangladesh started gaining strength. Linkages between those movements led to the formation of a transnational indigenous peoples' movement. Their common issues range from genocide, militarization, structural discrimination and exclusion, displacement from their ancestral territories and expropriation of their lands and resources without their consent, development aggression, extrajudicial killings, illegal arrests, torture, violence against women, to outright banning of the use of their languages, wearing of their traditional dress and practising of their own culture and religions amounting to ethnocide. In 1977 the "International NGO Conference on Discrimination against Indigenous Populations in the Americas" was held in Geneva and adopted the "Declaration of Principles for the Defense of Indigenous

Nations and Peoples of the Western Hemisphere", asserting that indigenous peoples are subjects of international law.

12. During the same period, the United Nations started developing major international human rights instruments, in addition to the Universal Declaration of Human Rights. The 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination were adopted although their entry into force took from 4 to 10 years. Treaty bodies[1] for those Conventions were established to monitor their implementation. Other human rights instruments are the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child and the 1984 Convention against Torture and Other Degrading Treatment or Punishment, the 1996 International Convention on the Rights of Migrant Workers and Members of Their Families and the 2006 Convention on the Rights of Persons with Disabilities.[2] Some indigenous persons and organizations have raised complaints and submitted shadow reports to the treaty bodies. The jurisprudence of those treaty bodies are now part of international human rights law.[3] They are vital contributions to the emergence of a body of law which confirms and protects the individual and collective rights of indigenous peoples.

13. Owing to the increasing pressure on the United Nations to address the basic human rights issues of indigenous peoples, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur in 1972 to prepare a "Study on the problem of discrimination against indigenous populations". The final report came out in 1982, known as the Martinez-Cobo report.[4] That study, along with the strong advocacy of the indigenous peoples' movement, led to the establishment of the Working Group on Indigenous Populations, whose mandate is to "review developments regarding the human rights of indigenous populations and to develop international standards".

14. The Working Group first met in 1982 and except for 1984, it met annually until 2006. It completed its work on a draft Declaration on the Rights of Indigenous Peoples in 1993 and submitted it to the Sub-Commission, which adopted it and recommended it to the Commission on Human Rights. That same year was also declared the International Year of the World's Indigenous People and the World Conference on Human Rights took place, with the representatives of indigenous peoples participating in large numbers. Among the achievements was the adoption

[1] The treaty bodies are the Human Rights Committee, which monitors the implementation of the Covenant on Civil and Political Rights and the Committee on Economic, Social and Cultural Rights, which monitors the Covenant on Economic, Social and Cultural Rights, and the Committee on the Elimination of All Forms of Racial Discrimination, which monitors the relevant Convention.

[2] The Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities specifically mention indigenous children and indigenous persons with disabilities, respectively.

[3] The jurisprudence of these treaty bodies comes from their concluding observations, general comments or decisions in response to the complaints raised to them. Fergus MacKay, a legal official of the Forest Peoples' Program has made several compilations of these. They can be downloaded from the website: www.forestpeoples.org.

[4] The document is available at the website of the secretariat of the Forum, www.un.org/esa/socdev/unpfii.

of recommendations calling on the General Assembly to proclaim the International Decade of the World's Indigenous People (1995-2004), to adopt the United Nations Declaration on the Rights of Indigenous Peoples and to establish a permanent forum on indigenous peoples in the United Nations.

15. In 1995, the Commission on Human Rights established its own Working Group to elaborate the draft Declaration recommended to the Commission by its Sub-Commission (resolution 1995/32), the Working Group on the Draft Declaration. The final draft was adopted by the Human Rights Council on 29 June 2006 and was sent to the General Assembly for adoption. The Assembly then deferred the adoption until September 2007 when its sixty-first session ends.

16. Indigenous representatives also took part in the regular sessions of the Commission on Human Rights, and also took part in the United Nations Conference on Environment and Development and other world conferences of the 1990s, including the World Conference on Human Rights (Vienna, 1993), Fourth World Conference on Women (Beijing, 1995), the International Conference on Population and Development (Cairo, 1994) and the World Summit for Social Development (Copenhagen, 1995). They participate in the Conference of States parties and working groups of the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change, the Working Group on Traditional Knowledge, Folklore and Traditional Cultural Expressions of the World Intellectual Property Organization (WIPO), the Commission on Sustainable Development and the Commission on the Status of Women.

17. To facilitate the participation of representatives of indigenous peoples in the various processes and to give them seed funds for specific projects, voluntary funds were established by the United Nations, which include the Voluntary Fund for Indigenous Populations (1984), Voluntary Fund for the International Decade of the World's Indigenous People (1995), Voluntary Fund for the Permanent Forum (2002), Voluntary Fund for Indigenous Peoples of the WIPO (2006), Voluntary Fund for Indigenous Peoples of the Convention on Biological Diversity (2006), and the Voluntary Fund for the Second Decade of the World's Indigenous People (2005).

18. The United Nations Permanent Forum on Indigenous Issues was established by the Economic and Social Council in its resolution 2000/22, which included human rights as one of its mandated areas. Since its first session in 2002, the number of representatives of indigenous peoples, Governments, non-governmental organizations, United Nations bodies, programmes and funds, academia and other multilateral organizations taking part in its annual sessions has increased to some 1,500 annually.

19. In 2001, the Commission on Human Rights by its resolution 2001/57 established a thematic procedure, the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, whose mandate is:

(a) To gather, request, receive and exchange information from all relevant sources, including Governments and indigenous people and their communities and organizations, on violations of their human rights and fundamental freedoms;

(b) To formulate recommendations and proposals on measures and activities to prevent and remedy violations of the human rights of indigenous people;

(c) To work closely with other special rapporteurs, special representatives, working groups and other independent experts reporting to the human rights bodies.

20. In December 2005 the General Assembly adopted in its resolution 59/174, the Programme of Action for the Second International Decade of the World's Indigenous People (2005-2015), with the following objectives:

(a) Promote non-discrimination and inclusion of indigenous peoples in international, regional and national processes;

(b) Promote full and effective participation of indigenous peoples in decisions affecting them;

(c) Redefine development from a vision of equity and in a culturally appropriate way — development with identity;

(d) Adopt targeted policies, programmes, projects, budgets for indigenous peoples' development;

(e) Develop strong monitoring mechanisms and accountability at the international, regional and national levels in relation to existing legal, policy and operational frameworks protecting indigenous peoples.

The theme of the Second Decade is "Partnership for action and dignity".

21. The unsatisfactory responses of many Governments to the pervasive violations of indigenous peoples' human rights has compelled indigenous peoples to bring their issues to international forums. Their active engagement in the various processes has brought forth gains insofar as more instruments and mechanisms address their issues. International human rights law now includes indigenous peoples' rights. That body of law, which can protect the individual and collective rights of indigenous peoples, can be seen in the following:

- The jurisprudence of the human rights treaty bodies
- The recognition and codification of indigenous peoples' rights in international instruments such as the United Nation Declaration on the Rights of Indigenous Peoples (as adopted by the Human Rights Council) and the draft Declaration on the Rights of Indigenous Peoples being discussed at the Organization of American States
- The incorporation of indigenous peoples' rights into conservation and environmental and development-related instruments and policies
- The policies on indigenous peoples of multilateral financial institutions (World Bank, ADB, IADB), UNDP, multilateral bodies (European Commission) and bilateral donors (Denmark, Spain, Germany, United Kingdom, Norway)
- The incorporation of those rights into domestic law, constitutions and practice; and through domestic judicial decisions.

22. This overview shows that for the most part indigenous peoples' movements emerged in response to experiences of grave violations of their basic human rights and fundamental freedoms. Their main demands are for non-discrimination, equality and self-determination and the right to subsistence, which are the basic principles upon which international human rights law is based. It is no surprise, then, that their

engagement with the United Nations began with the Commission on Human Rights and its subsidiary bodies.

23. Indigenous peoples' engagement with the Commission, in particular the formulation of and negotiations on the Declaration on the Rights of Indigenous Peoples, has substantially enriched the discourse on human rights. The contributions of indigenous peoples in elaborating further the discourse on self-determination, collective rights, rights to lands, territories and resources, rights to culture, knowledge and identity cannot be underestimated. Even when they expanded their engagement beyond the Commission, their goal was to make those bodies and processes recognize the links between the respect and protection of indigenous peoples' rights and with environment, development, humanitarian and peacekeeping efforts. It can be said that the human rights-based approach to development, environment, humanitarian and peace work has always been the path taken by indigenous peoples' movements.

24. Indigenous peoples recognized that their efforts to influence the various United Nations bodies and programmes in different fields required a body where they could be discussed and analysed in a more comprehensive manner and where gains could be used to reinforce the work in the various arenas. This body would be the mechanism that would link together all the actors dealing with indigenous peoples' issues for better coordination and complementation. Indigenous representatives who conceptualized the establishment of a United Nations Permanent Forum on Indigenous Issues were clear that that is the main rationale for its establishment. Less than 10 years after the recommendation for its establishment was passed at the Vienna Conference[5] it is now a reality. The struggle of indigenous peoples for human rights and for self-determined development has been successfully brought to a higher body within the United Nations.

25. The evolution of the international human rights system in more than five decades has led to a more comprehensive approach beyond just "naming and shaming" Governments. Human rights monitoring, which is the main task of the treaty bodies, is now covered by more mechanisms. Special procedures are established and special rapporteurs are appointed and mandated to monitor situations of human rights violations. The United Nations, together with human rights non-governmental organizations, women's organizations, indigenous peoples' organizations, and workers' labour unions, among others, has programmes and projects which support human rights institution-building, human rights information, education and training. In recent years, many training workshops have been organized by indigenous peoples' organizations and institutions in coordination with other human rights non-governmental organizations for indigenous peoples to understand how to better use the United Nations human rights system towards better compliance and accountability from the human rights duty bearers.

26. In the late 1990s the United Nations system started to integrate human rights in development work and humanitarian and peace operations. The various United Nations bodies, agencies and programmes reached a "Common Understanding of a Human Rights-Based Approach to Development" at a meeting which took place in 2003. It integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. Indigenous

[5] Vienna Declaration and Programme of Action (A/CONF/157/24).

peoples have repeatedly stated in various forums that this is the approach which approximates their perspective of how development should take place in their midst.

## III. Human rights mandate of the Permanent Forum

27. The United Nations has developed various bodies, instruments, mechanisms, tools and methods to implement its human rights mandate under the Charter. The bodies and mechanisms include the Human Rights Council, which replaced the Commission on Human Rights as of 2006, expert bodies and their various Working Groups, the treaty bodies, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the special procedures and United Nations field operations.[6] They are engaged in:

(a) Human rights standard-setting;

(b) Human rights monitoring;

(c) Preparing studies and reports of comparative law and practice on new or emerging human rights issues that require special attention, clarification, research and the development of international human rights policies, guidelines or standards;

(d) Providing technical assistance and cooperation for the development or enhancement of national laws, institutions and capacities that will promote and protect human rights;

(e) Providing an open public forum for an international discussion of human rights themes or specific country situations and giving international visibility to such situations;

(f) Adopting resolutions/decisions on human rights, expressing the views and concerns of the international community, raising awareness and taking action on a number of human rights subjects or country situations.

28. The Forum must implement its human rights mandate without duplicating the work of other human rights bodies and mechanisms. However, as will be seen in the next section, overlaps in implementation are inevitable. But since the situation of human rights of indigenous peoples is still in a dismal state, the more initiatives there are to address that, the better it will be for indigenous peoples.

29. The Forum's advantage is that it enjoys the participation of representatives of several hundred indigenous peoples' organizations, more than 70 States Members of the United Nations, more than 35 United Nations bodies, programmes and funds and other multilateral bodies, and representatives of NGOs, academia and the private sector. The Forum has 16 members composed of equal numbers of indigenous and government experts. Furthermore, there is an Inter-Agency Support Group on Indigenous Issues which is composed of 30 United Nations bodies, programmes, agencies and funds as well as such intergovernmental bodies as the European Commission, the Fondo Indigena, the Inter-American Development Bank, and others. The Group is actively engaged with the work of the Permanent Forum. The Group facilitates the mandate of the Forum to provide advice and help to coordinate the work of these entities.

[6] The future of the expert bodies and special procedures is still under discussion in the Human Rights Council.

30. Another advantage of the Forum is that it is able to bring high-level officials of the United Nations system to participate in some or all of its sessions. The Secretary-General, the President of the General Assembly and the High Commissioner for Human Rights have spoken before the Forum. Besides the Special Rapporteur on the human rights of indigenous people, there are other special rapporteurs and chairs of human rights bodies who participated and made presentations at the Forum sessions. They include the Special Rapporteur on Violence against Women, the Chair of the Committee on the Rights of the Child, the Chair of the Working Group on Indigenous Populations and the Chair of the Commission on the Status of Women. Regional human rights bodies also participated in the 2006 session, namely the Chair of the Working Group to Prepare the Draft Declaration on the Rights of Indigenous Peoples of the Organization of American States and the Chair of the Working Group of Experts on Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights. The Forum also hosts at its sessions the representatives of grassroots-based indigenous peoples organizations and networks as well as national and regional networks.

31. The Under-Secretary-General for Economic and Social Affairs, who is the Coordinator of the Second Decade of the World's Indigenous People, makes it a point to address the opening or closing meeting of the Forum. The Vice-President of the World Bank presented a report during the 2005 session and the Assistant President of the International Fund for Agricultural Development and the Chair of the United Nations Forum on Forests presented their reports at the 2006 session. As far as Member States are concerned, several Ambassadors of the Permanent Missions in New York come to present their interventions. The Foreign Minister of Ecuador, who became a member of the Forum after leaving that office, spoke at the 2003 session and the Foreign Minister of Bolivia spoke at the 2006 session.

32. The participation of high-level officials of the United Nations and Governments at the Forum's sessions provides encouragement to indigenous peoples and to the staff of United Nations agencies who work on indigenous issues. It also allows the establishment of relationships between indigenous peoples and decision makers, which is a major step in giving meaning to the theme of the Second Decade — "Partnership for Action and Dignity". Opportunities are provided for indigenous peoples to talk with high-level officials from their countries and from United Nations bodies, which is virtually impossible at the country level. Furthermore, indigenous peoples become more aware of the existence of other human rights bodies and mechanisms besides the Working Group on Indigenous Populations and the Permanent Forum.

33. The goal of the Forum as a United Nations body should be to ensure that the economic, social, cultural, civil and political rights of indigenous peoples are respected and promoted. For that to happen, it is necessary to raise the awareness of all relevant actors, i.e., the intergovernmental system, governments and civil society at large, including non-governmental organizations, the private sector and academia of the situation of indigenous peoples. All the actors should then be urged and mobilized to critically analyse their own policies, laws, programmes, projects and budgets in terms of how they are addressing indigenous issues. On the basis of that analysis, they can redesign those instruments in partnership with indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples (as adopted by the Human Rights Committee) and the programme of the Second Decade

of the World's Indigenous People are the best frameworks to use to analyse and redesign such policies and programmes.

## IV. Review of the implementation of the human rights mandate of the Permanent Forum between 2002 and 2006

34. A large number of statements by indigenous representatives during the Forum sessions is under the human rights agenda item. The Forum hears various allegations of atrocities and human rights violations against indigenous peoples in many countries. In serious cases some countries have been identified in the reports of the Forum.

35. Allegations of gross violations of the human rights of indigenous peoples in one country due to the conflict in the area were presented at the 2003 session. This was brought to the attention of the President of the Security Council in a meeting with him and the Bureau of the Forum. He was urged to bring the matter before the Security Council for immediate action. As the Forum sessions are held in New York it is possible to arrange such meetings.

36. Another case raised at the 2005 session was that of displaced nomadic indigenous peoples. The Forum decided that the Chair should hold a confidential dialogue with the representatives of the country concerned to convey deep concern, to hear their side and to ask for appropriate action. In such situations, the Forum is obliged to engage the Government in question and to inquire about the steps being taken to remedy the situation. It can also provide an audience to the alleged victims of human rights violations.

37. The Forum has supported the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. At every session since 2002, he has come to present a summary of his latest reports under the human rights agenda item. At least one public session is devoted to this along with a dialogue with the participants. Indigenous representatives from regional caucuses and organizations present concise statements on human rights issues to him.

38. With the adoption of the themes "Indigenous children and youth" (2003) and "Indigenous women" (2004), indigenous representatives came to the Forum sessions prepared to present cases of violations of the rights of indigenous children and women. Those themes were deliberately chosen because the Forum deemed it crucial that the situation of the most vulnerable sectors among indigenous peoples be given prominence. That was an appropriate choice because among the many results, it was agreed that "indigenous women" and "indigenous children and youth" will be cross-cutting issues which will be addressed at all the sessions. Those themes also attracted relevant United Nations agencies and bodies dealing with those issues to come to participate in the Forum sessions, including the Chair of the Committee on the Rights of the Child, UNICEF, the Chair of the Commission on the Status of Women, UNIFEM, UNFPA, WHO and FAO, among others.

39. Indigenous women's networks[7] in the Americas, Africa and Asia held their own regional conferences to prepare for the 2004 session. Even the IASG members

[7] The networks include the Intercontinental Network of Indigenous Women of the Americas, and the Asia Indigenous Women's Network.

focused their reports on the work they do with indigenous women. The Forum recommended that the Committee on the Elimination of Discrimination against Women develop a general comment on indigenous women and ensure that its reports include situations of indigenous women. The secretariat of the Forum, which is a part of the Interagency Network on Women and Gender Equality, led the formation of a Task Force on Indigenous Women under this umbrella. It was established in 2004 and adopted a three-year programme of work. In 2004-2005, the Task Force conducted a general survey of the work of the United Nations system with indigenous women. During the second year, 2005-2006, the Task Force compiled a report on "Indigenous women and the United Nations system: good practices and lessons learned", which highlighted how various United Nations bodies, agencies, programmes and funds are addressing indigenous women's issues.[8]

40. During the sessions of the Commission on the Status of Women, the secretariat of the Forum works closely with representatives of indigenous women in that body. The secretariat has organized orientation meetings between the indigenous women and the various New York-based United Nations agencies working with indigenous women. The meetings were very useful in making indigenous women understand better what United Nations bodies, programmes and funds are doing. They present opportunities for indigenous women to explore jointly with those bodies what remains to be done to address indigenous women's rights and development issues. The 2006 session recommended that the Special Rapporteurs on Violence against Women and Trafficking of Persons be invited to every session of the Forum to submit reports and to listen to discussions of issues relevant to their mandates (see E/2006/43, para. 51).

41. The plight of indigenous children has, likewise, become a key concern of United Nations bodies dealing with children's rights. The adoption of the theme "indigenous children and youth" for the second session in 2003 provided the impetus for UNICEF and the Committee on the Rights of the Child to do various activities on indigenous children. UNICEF worked on a digest on the indigenous child, as well as a number of case studies aimed at understanding development programming to fulfil the rights of indigenous children. During the International Day of the Child on 19 September 2004, the theme "Indigenous child" was adopted by the Committee on the Rights of the Child. One of the recommendations of the Forum was to request the Special Rapporteur in examining the question of the sale of children, child prostitution and child pornography to pay special attention to indigenous children and make recommendations on rights of indigenous children (E/2003/43, para. 17).

42. In July 2005, the UNICEF Regional Office for Latin America and the Caribbean organized jointly with indigenous peoples the Ibero-American Meeting on the Rights of Indigenous Children and Adolescents, which was held on 7 and 8 July 2005 in Madrid. That Office also initiated the formation of a consultative indigenous group which they are linking with the various agencies based in the region. In 2006, UNICEF in the Philippines undertook a participatory action research project on indigenous children who belong to the Kabihug people. Those children are victims of practices of child labour and slave-like working conditions. The case was presented to the Special Rapporteur on Indigenous Peoples in his follow-up visit to the Philippines in February 2007.

[8] For the report, see the website of the secretariat of the Forum: www.un.org/esa/socdev/unpfii.

43. Some members of the Forum actively participated in the various human rights seminars and expert seminars held by the Office of the High Commissioner for Human Rights.[9] Several of the issues raised before the Forum directly relate to human rights concerns and as a consequence the Forum organized international expert group meetings to discuss these issues in more depth. They are:

- International Expert Meeting on data collection and disaggregation, January 2004
- Technical Workshop on Free, Prior and Informed Consent, January 2005
- Expert Group Meeting on the Millennium Development Goals, Indigenous Peoples' Participation and Good Governance, January 2006
- Expert Group Meeting on the Convention on Biological Diversity International Regime on Access and Benefit-sharing and Indigenous Peoples' Rights, January 2007.

44. The Forum is putting a great deal of effort in elaborating further how the human rights-based approach to development can be operationalized for indigenous peoples. That framework is used to analyse and evaluate the implementation of the Millennium Development Goals and other programmes and policies of other United Nations agencies and programmes. The theme "Millennium Development Goals and indigenous peoples" was adopted for the years 2005 and 2006 and opportunities were provided to make indigenous peoples more aware of the Millennium Development Goals and discuss how that relates to them. The sessions noted that the Millennium Development Goals do not necessarily include a human rights perspective. The Forum called for the integration of the human rights of indigenous peoples as an approach in achieving those goals.

45. The Forum has asked for the integration of the human rights-based approach to development in the Millennium Development Goal country reports and other poverty reduction strategies in countries with indigenous peoples. Various desk reviews were prepared by its secretariat and the ILO, which analysed to what extent indigenous peoples' issues are included in the United Nations common country assessment and the United Nations Development Assistance Framework in various countries, as well as in poverty reduction strategy papers and Millennium Development Goal country reports. The common conclusion of those reports is that there is a lack or very inadequate coverage of indigenous peoples in such documents. The Forum urged indigenous organizations to actively assert their right to participate in the formulation of these various country reports and frameworks and to be involved in monitoring. They can then present their reports to the Forum on how they had been involved by the various bodies in charge of producing such documents.[10]

46. The Forum supported a project which allowed indigenous persons to evaluate International Fund for Agricultural Development-supported projects in indigenous territories. Part of this effort was the development of an "Advocacy Framework for Indigenous and Tribal Peoples' Rights", which was discussed and finalized with the

[9] Examples include the expert seminar on permanent sovereignty of indigenous peoples over their resources, which was held in 2005, and the expert seminar on indigenous peoples and treaties and other constructive arrangements, held in 2006.

[10] See E/2006/43, para. 26.

Inter-agency Support Group on Indigenous Issues and with some members of the Forum. Another project is on "Indigenous peoples and indicators of poverty and well-being". This brought together for discussion indigenous and non-indigenous experts from Latin America, Asia and Africa. The development of indicators to measure the progress in achieving the Millennium Development Goals for indigenous peoples and also for the Convention on Biological Diversity is a groundbreaking effort pursued by the Forum with indigenous peoples (especially the Indigenous Peoples' International Forum on Biodiversity Working Group on Indicators) and the United Nations system.

47. At the fifth session, the Forum adopted important recommendations on human rights. Firstly, it called on the newly established Human Rights Council to ensure that indigenous issues remain as a standing item in its agenda. Secondly, it asked the Council to maintain and improve mechanisms, mandates, special procedures, expert advice mechanisms and complaint procedures relevant and pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous peoples (para. 79).[11] Thirdly, it urged the Human Rights Council to ensure that the universal periodic reviews it will conduct will examine the situation of indigenous peoples of a country under consideration (para. 80).

48. The Forum has been able to attract the participation of the International Organization for Migration (IOM) to its sessions. In 2004 the Forum called on IOM to look into the issue of migration and indigenous women, in particular cases of trafficking of indigenous women. In response to this, IOM, together with the Forum's secretariat, organized the Expert Workshop on Indigenous Peoples and Migration in April 2006. The results of the workshop were fed into the United Nations High-Level Dialogue on International Migration and Development, held in October 2006. The workshop recommended that indigenous peoples should be made more aware of the existence of international treaties like the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Elimination of Discrimination against Women and be trained on how to use them for their issues on migration. IOM has initiated a process towards the creation of a coordinating mechanism to address the issue of trafficking of indigenous women and girls.

49. The Forum played an important advocacy role for the adoption of the Declaration at its fifth session in May 2006. It expressed its conviction that a declaration on the rights of indigenous peoples will be an instrument of great value through which to advance the rights and aspirations of indigenous peoples. It strongly recommended that the General Assembly at its sixty-first session adopt, without amendment, the draft Declaration on the Rights of Indigenous Peoples as finalized by the Working Group on the Draft Declaration in February 2006. The Forum also stated that that would represent a major achievement for the Second International Decade of the World's Indigenous People.[12] The Forum is explicitly mentioned in article 42 of the Declaration, which states that "[T]he United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration".

[11] The paragraphs indicated in parentheses refer to E/2006/43-E/C.19/2006/11.

[12] See E/2006/43, para. 68.

50. The activities mentioned in this section do not cover the whole breadth of what the Forum has done to implement its human rights mandate. It has not covered the activities under the mandates of education, environment, health and culture. Several of the recommendations under these items are those which call on Governments and United Nations agencies to respect the rights of indigenous peoples to education, such as bilingual and intercultural education for indigenous children, the right to have control over their lands and resources and to have their consent obtained freely before they may be relocated or before projects are brought into their communities, respect of their rights to health and to practice their own cultures and speak their languages.

51. In conclusion, the Forum has monitored the situation of human rights of indigenous peoples, elaborated on the human rights-based approach to development, and integrated human rights across its overall work, on economic and social development, environment, health, education and culture, and when it deals with its annual special themes. Human rights underpins most of the recommendations which emerged from the special themes on indigenous children and youth, indigenous women, indigenous peoples and the Millennium Development Goals and issues on migration and housing. The Forum has adopted a holistic, multidisciplinary and multifaceted approach to the promotion and protection of the human rights of indigenous peoples. The universality, inalienability and indivisibility of human rights is very well demonstrated in the way the Forum has implemented its mandate.

## V. Work of the Permanent Forum on human rights: challenges and prospects

52. With the ongoing United Nations reform, which includes the establishment of the Human Rights Council and related changes, the Forum is now called upon to play a special and creative role in the field of human rights. The Forum has called on the Council to maintain and strengthen mechanisms which will address indigenous peoples' human rights and also to make indigenous issues a standing agenda item. The mandate of the Special Rapporteur on the human rights and fundamental freedoms of indigenous people is well recognized and established and this will presumably lead to the continuation of this procedure in the Council.

53. Thirty-five years have been spent by indigenous peoples to have the United Nations give more prominence to indigenous peoples' rights in the international human rights agenda. Within this period the indigenous peoples' movement has increased its visibility and strengthened transnational partnerships and solidarity on the basis of human rights, development, peace and humanitarian work. There is no turning back and any adverse efforts to diminish what has been achieved in the potential of the work of the United Nations on indigenous peoples' rights are doomed to fail.

54. The main challenges faced by the Forum in implementing its human rights mandate are the following:

- Continuing egregious violations of the basic rights and fundamental freedoms of indigenous peoples
- Wide gap between policy and implementation of the rights of indigenous peoples

- Coordination gaps between the Permanent Forum and the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights and also between the Forum and other treaty bodies, United Nations agencies and programmes
- Deferral of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly
- High expectations from indigenous peoples on what the Forum can do to address the issues they raise at the sessions.

55. In addition to the practice it has already established, the Forum still has a large part of its human rights mandate to explore in future years, in ways that will add value to the work of the Human Rights Council, the human rights treaty bodies and the High Commissioner for Human Rights.

56. While the Indigenous Peoples' Unit in the Office of the United Nations High Commissioner for Human Rights sits as a member of the Inter-agency Support Group on Indigenous Issues, there is still much room for improvement towards better coordination. Representatives of the Human Rights Council, the Forum, the Office of the United Nations High Commissioner for Human Rights and the Permanent Forum secretariat can hold meetings to discuss further the areas of work that need to be coordinated and the steps that need to be taken to improve coordination. Some issues which can be tackled include:

- The present state of the ongoing restructuring in the Human Rights Council and the mechanisms for indigenous peoples to participate more fully and effectively
- Possible joint expert group meetings or seminars on issues related to human rights
- Technical assistance and cooperation with Governments and indigenous organizations
- Interface between the Human Rights Council and the Permanent Forum
- Monitoring the implementation of the Declaration on the Rights of Indigenous Peoples once it is finally adopted, and enhancing the monitoring of the Second Decade of the World's Indigenous People Programme of Action.

57. The implementation gap which emerges in various meetings has to be addressed more systematically. The Special Rapporteur has held relevant consultations with indigenous peoples' organizations and human rights NGOs and a report on the results is expected. It is important to study that report to see what the Permanent Forum can contribute in furthering the recommendations. This can also be a subject of further dialogues between indigenous peoples, Governments and the United Nations system during the sessions of the Forum or in expert seminars. Technical assistance for Governments to address this gap might also be facilitated if Governments request it.

58. The Forum's practice of inviting the Special Rapporteurs, the chairs of some treaty bodies, regional human rights intergovernmental bodies and political bodies should be extended to other rapporteurs and treaty body chairs or members. This can include the Chair or members of the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on Economic, Social

and Cultural Rights and the Committee on the Elimination of Discrimination against Women. Prioritizing can be done based on the themes of the Forum sessions. The officials can be invited to present some ideas on what joint approaches or steps can be taken to improve the compliance of States with their human rights obligations and to ensure that their decisions, related to indigenous peoples' issues brought before them, are better implemented at the country level. The role of various United Nations agencies and programmes in support of such concrete steps can also be discussed.

59. Based on its experience, the Forum can carry the human rights message to the Governments in a variety of approaches. When the Forum receives an appeal for a specific case of a gross human rights violation, the Forum's Bureau could analyse the situation, in consultation with the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, and, if it deems it appropriate, consider extending its good offices vis-à-vis a government appealing for correction of the situation. Other ways could include a mission to the country at the invitation of a government to ascertain the validity of the information received and to dialogue with the indigenous peoples concerned and with the relevant government bodies and officials. The authority of the Forum as the highest United Nations body in the area of indigenous issues would be well served by such approaches.

60. Once the Declaration is finally adopted, the Forum can invite States in a periodic dialogue to discuss its implementation. Such dialogues could also help identify areas where the assistance of United Nations agencies may be useful, to build national capacities in various areas that would help in the promotion and respect of indigenous peoples human rights. The work of the Committee on the Rights of the Child under the Convention on the Rights of the Child is one way of seeing the work of the Forum in this regard. This same approach can be used with the Programme of Action of the Second Decade of the World's Indigenous People. Governments are expected to submit written reports on how they are implementing this programme. Aspects of the programme which are directly linked to human rights can be monitored and reports thereon can be requested.

61. The Forum could also build much more systematically on its cooperation with the United Nations system to monitor the implementation of the human rights-based approach to development by the various agencies and to help operationalize this approach. One way this could be pursued is a periodic in-depth dialogue with individual United Nations agencies based on reports and well-prepared research that will include the inputs of indigenous communities, where agencies deploy their programmes. Such dialogues would contribute to awareness-raising and capacity-building within the agencies, as well as help in the building of partnerships with indigenous peoples and the donor community as well. The recommendation to improve the coordination between the Permanent Forum and the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights can also be made with other United Nations agencies and bodies. Closer cooperation and coordination among various United Nations bodies, exchange of expertise and a multidisciplinary approach, especially in the human rights field, are clearly in the spirit of the United Nations reform in the last few years and the Forum has an important contribution to make in this direction, given its broad mandate.

62. The other area which has not yet been dealt with by the Permanent Forum is indigenous peoples' human rights and the private sector. The Office of the United

Nations High Commissioner for Human Rights organized a Workshop, "Indigenous Peoples, Private Sector National Resource, Energy and Mining Companies and Human Rights", in December 2001, which called on the Office of the United Nations High Commissioner for Human Rights to organize, in cooperation with indigenous peoples, the Working Group on Indigenous Populations and other relevant United Nations organs and organizations, the private sector and Governments, and possibly investment and social auditing representatives with experience of measuring and monitoring company practices, a second workshop to elaborate a draft framework for dialogue and implementation on consultation, benefit sharing and dispute resolution in private sector projects affecting indigenous peoples. This has not yet materialized. Inasmuch as it is an issue constantly raised by indigenous peoples, the Permanent Forum can explore the possibility of organizing a joint activity with the Office of the United Nations High Commissioner for Human Rights and the Special Representative of the Secretary-General on human rights, transnational corporations and other business enterprises to address these issues.

63. Given the unique composition of the Permanent Forum and the principle of consensus under which it operates, international standard-setting could also be explored by the Forum. Other bodies, besides the Commission on Human Rights, such as the Commission on the Status of Women, the Commission on Social Development, ad hoc committees of the General Assembly and others, have at times contributed significantly to standard-setting efforts at the United Nations. In order to equip itself for such standard-setting work, the Forum will need to further develop its research capacity. The Forum has already launched research work by mandating various members to prepare papers on challenging subjects, including one mandated at the fifth session on the extent to which customary laws should be reflected in international and national standards addressing traditional knowledge.[13] Standard-setting work could be pursued by the Forum, if mandated by the Economic and Social Council, and also in cooperation with the Human Rights Council.

64. In relation to the adoption of the Declaration on the Rights of Indigenous Peoples, the Permanent Forum can sponsor more dialogues between indigenous peoples and Governments to further discuss areas of concern. These can be informal dialogue sessions with the intent of bridging the gap between the positions of government and indigenous peoples so that the adoption by the General Assembly will take place before September 2007. Such dialogues can be facilitated during the sixth session of the Forum in 2007. The United Nations Declaration on the Rights of Indigenous Peoples, as often reiterated, is an important framework for the Permanent Forum's work. Since it is also identified as a body which will help monitor its implementation, it is incumbent upon the Forum to support all efforts for the adoption of the Declaration.

65. The biggest challenge which needs the full cooperation of indigenous peoples, Governments, United Nations bodies, programmes and funds, other multilateral organizations and NGOs is how to ensure that the individual and collective human rights of indigenous peoples are enjoyed by them in their daily lives, in their own communities. The success of the Forum will be measured by how it can help accomplish this.

[13] E/2006/43, para. 172.

66. The participation of high-level representatives of most of the United Nations bodies, programmes and funds as well as other multilateral bodies, the Governments and of the most important networks and organizations of indigenous peoples all over the world is what makes the Forum creative and dynamic in the way it deals with the various issues brought to its attention. The wealth of information and experiences which are brought to the Permanent Forum should be analysed and effectively used to address the difficult human rights challenges indigenous peoples face on a day-to-day basis. The convening capacity of the Forum to bring all relevant actors is crucial in the search for justice, human rights and self-determined development for indigenous peoples all over the world.

United Nations E/C.19/2007/7

Economic and Social Council

Distr.: General
13 March 2007

Original: English

**Permanent Forum on Indigenous Issues**
**Sixth session**
New York, 14-25 May 2007
Item 3 of the provisional agenda*
**Special theme: "Territories, lands and natural resources"**

# Information received from non-governmental organizations in consultative status with the Economic and Social Council

## International Work Group for Indigenous Affairs

## International Work Group for Indigenous Affairs and Tebtebba Foundation

*Summary*

The present document consists of two sections. The first contains information provided by the International Work Group for Indigenous Affairs, on behalf of the NGO Forum on Cambodia, on the situation regarding lands, territories and natural resources issues vis-à-vis indigenous communities in Cambodia, including recommendations to the Permanent Forum on how to address them. The second contains a summary and the recommendations of the Asia Regional Conference on indigenous peoples and communal land held in Kompong Cham, Cambodia, from 14 to 16 February 2007, provided by the International Work Group for Indigenous Affairs and the Tebtebba Foundation.

* E/C.19/2007/1.

07-26814 (E) 280307

# I. Information from the International Work Group for Indigenous Affairs

## A. Introduction

1. Empirical research suggests that the number of indigenous peoples in Cambodia is around 190,000, or 1.4 per cent of the total population. The 1998 Cambodian population census identified 17 different indigenous peoples. Compared to its neighbours in South-East Asia, Cambodia has the smallest population of indigenous peoples, both relatively and in absolute numbers. The country's ethnic Khmer majority accounts for approximately 90 per cent of the population.

## B. Illegal alienation of land from indigenous communities

2. Despite the favourable regulations for indigenous communities in the 2001 Land Law, the lack of implementation and enforcement has left indigenous peoples vulnerable to commercial and State interests, which are increasingly attracted to exploiting the economic potential of the forests and upland areas traditionally used and managed by indigenous communities.

3. Road development continues to have a serious impact on indigenous communities. Massive land seizure has been witnessed during the construction of roads linking Mondol Kiri Province to Ratanakiri Province, and Kratie Province to Stung Treng Province. News of planned road development to be funded by the World Bank in Preah Vihear Province has led to increased seizure of land in Kui communities by outsiders.

4. The trading of land has also involved many indigenous persons who have been corrupted by an environment of self-interest. People in government have been deeply involved in these illegal land deals as buyers, sellers, approvers and brokers.

5. Indigenous peoples' attempts to tackle land grabbing have been frustrated by the courts and many in Government. In a notable case in Aikapeap commune in Ratanakiri Province, a court upheld the seizure of land belonging to a Tampuen community. There are allegations of the involvement of high-ranking government officials in the transaction of land to transform it into a rubber plantation.

6. In February 2007, those issues were raised in a national workshop, which was attended by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. The situation is now critical and urgently requires attention.

## C. Land concessions

7. Economic land concessions for the development of plantations were granted on indigenous communities' land or land they use in Kratie, Stung Treng, Oddar Meanchey, Siem Reap, Preah Vihear, Ratanakiri, Mondol Kiri, and Kompong Thom Provinces.

8. Wuzhishan, a Chinese company, continues work on a large pine plantation in Mondol Kiri Province on land belonging to Punong communities. The Special Representative of the Secretary-General on the situation of human rights in Cambodia called for the cancellation of the land concession in his statement of 5 July 2005. Another Chinese company, New Cosmos, continues to exploit a tourism concession in an area sacred to the Suoy people in Kompong Speu Province, despite local resistance.

9. In many areas, indigenous communities are being told by government officials and business people that they will have their lands taken for social, mining or tourism concessions, or for other reasons. They are allegedly told that it is better for them to sell their land illegally now rather than have it taken in the future with no income at all.

## D. Mining

10. In Cambodia, the 2001 Land Law provides little or no protection to indigenous peoples with regard to mining concessions. This is a great concern, especially as there has been a significant acceleration of the idea that indigenous peoples' land must be industrialized "in the national interest". Without any control of mining, the provisions in the law related to indigenous peoples' lands would be meaningless.

11. In 2006, the Government announced that 100,000 hectares of land were being granted to Japanese and Australian companies for mineral exploitation in north-eastern Cambodia. It should be noted that existing mining concessions on indigenous communities' land in Ratanakiri, Preah Vihear and other provinces were issued without the prior consent of indigenous peoples. In Stung Treng, the development of an iron mine on indigenous land has recently slowed. All concessions have been granted with the absence of free, prior and informed consent.

## E. Forestry issues

12. In January 2002, the Government of Cambodia imposed a moratorium on logging in forest concessions. However, it has now begun to allocate logging areas to companies for annual harvesting rights, in some cases in areas used by indigenous communities. One annual coupe was granted in an area in Ratanakiri Province. Logging was approved without adequate consultation with indigenous communities residing in and around the allocated forest area. Investigations found significant departures from plans and standards. In some areas of Kratie, Mondol Kiri and Preah Vihear Provinces, indigenous communities patrol forest areas themselves because the official structures have proved ineffective.

## F. Land title registration

13. The 2001 Land Law includes a chapter on the registration of communal lands of indigenous communities, providing a mechanism to safeguard indigenous communities' land in the form of communal land titles. However, no such titles have yet been granted.

14. In the indigenous people land policy currently being drafted, there have been attempts to place limits on the amount of "spirit forest" and "cemetery forest" allowable in communal land titles in the future. Such attempts are clearly against the 2001 Land Law, which states that the boundaries of indigenous peoples' lands are those agreed upon by the communities themselves.

## G. Hydroelectric dams

15. Enormous problems have been reported since mid-1996 as a result of hydropower dams located on the Sesan River in Viet Nam, which flows through Ratanakiri and Stung Treng Provinces in the north-east of Cambodia. Many of the communities located along the river are indigenous.

16. While these problems persist, they are likely to be exacerbated by more dams that have already been commenced or are being planned in Viet Nam and the Lao People's Democratic Republic on the Sesan, Srepok, Sekong and Mekong Rivers. International donor agencies and multilateral banks continue to support and validate their construction by fostering associated projects, such as power-line construction and funding feasibility studies.

## H. Security of community people protecting their rights

17. A cause for increasing concern is the number of indigenous and non-indigenous activists being arrested, often illegally, for resistance to land and forest alienation attempts by wealthy and powerful people or companies. Cases in several provinces have shown how this has played a role in targeted intimidation against indigenous activists who have had to resort to non-violent protest in attempts to have forest and land issues addressed.

## I. Understanding of indigenous issues in Cambodia

18. Most Cambodians are generally not aware of indigenous peoples' rights or culture. The same can be said for the majority of people working for United Nations agencies. Education programmes within the United Nations and in Cambodian society generally are urgently required.

## J. Recommendations

### Land

19. **The United Nations Permanent Forum on Indigenous Issues should urge United Nations agencies, the World Bank, the Asian Development Bank and bilateral donors to work with the Government of Cambodia to develop a commitment to addressing land issues, by:**

- **Implementing a clear and concise programme of information for States to the effect that the sale or trade of indigenous community land is contrary to the 2001 Land Law; that the lands will not be taken for concessions;**

**and that land acquired from indigenous communities subsequent to the 2001 Land Law will not recognized.**

- **Issuing clear directives and rules to commune councils that the approval of land sales in indigenous peoples' areas is contrary to the 2001 Land Law.**

20. **The Permanent Forum should establish an independent investigation into the alleged abuse of indigenous peoples' land rights through illegal land alienation, and the issuance of land, forestry, tourism and mining concessions. The investigation should establish:**

- **Recommendations on how the rights of indigenous peoples can be legally protected.**
- **The degree to which the Government of Cambodia ensured free, prior and informed consent of indigenous peoples in decisions to approve land concessions and mining exploration licences for traditional lands and forests of indigenous peoples.**
- **The role of other States in the promotion of agribusiness and extractive industries in the north-east of Cambodia without the free prior and informed consent of indigenous peoples.**
- **The role of multinational agribusiness and extractive industries in the north-east of Cambodia and whether corporate social responsibilities have been fulfilled.**

**Forestry issues**

21. **The Permanent Forum should urge the World Bank to follow through with the specific actions that were identified in its Management Report and Recommendations in Response to the Inspection Panel report of May 2006, including the withdrawal of all existing logging concessions and the promotion of more equitable and sustainable alternatives of forest management.**

**Hydroelectric dams**

22. **The Permanent Forum should express its deep concern to the Government of Cambodia and the Government of Viet Nam at the undermining of the rights of indigenous peoples that hydroelectric dams represent.**

**Security of community people protecting their rights**

23. **The Permanent Forum should recommend to the Office of the United Nations High Commissioner for Human Rights and the Government of Cambodia to establish a monitoring mechanism for reporting to the international community the treatment of indigenous peoples attempting to protect their resource rights.**

# II. Information from the International Work Group for Indigenous Affairs and the Tebtebba Foundation

## Summary and recommendations of the Asia Regional Conference on indigenous peoples and communal land

24. From 14 to 16 February 2006, a total of 95 indigenous representatives from Bangladesh, Cambodia, India, Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, Myanmar, Nepal, the Philippines, Thailand and Viet Nam gathered in Kompong Cham, Cambodia, to attend the Asia Regional Conference on indigenous peoples and communal land. The Conference was organized by the Asia Indigenous Peoples Pact and NGO Forum on Cambodia, with the support of the International Work Group for Indigenous Affairs and the European Commission.

25. The participants were brought together by their shared concern over the lack of recognition of communal land rights in many Asian countries, the rapid loss of land, and the erosion of traditional communal land tenure, use and management systems in indigenous communities across the region. Indigenous communities identify themselves strongly with their territory. Their relationship to land has not only a pronounced communal, but also an inter-generational, character, and their relationship to land is multidimensional: economic, social, cultural and spiritual. In her working paper (E/CN.4/Sub.2/2001/21), the Special Rapporteur noted that the gradual deterioration of indigenous societies could be traced to the non-recognition of the profound relationship that indigenous peoples have to their lands, territories and resources.

## A. The common picture

26. Across Asia, indigenous peoples are being deprived of their land and resources. The process began during the colonial era, but continued under post-colonial independent nations. Land classification systems and basic legal concepts, like that of eminent domain, whereby the State claims ownership over vast areas of land, were introduced by the colonial powers and are still enshrined in the Constitution of many Asian States. In the process, the presence of indigenous peoples and their customary land rights and management systems were and continue to be ignored. In those cases where customary rights are legally recognized, the implementation and enforcement of the respective laws and policies are generally weak, often hindered by contradicting legislations and sometimes altogether absent as a result of intervening powerful vested interests.

27. A critical stand against large-scale resource and land appropriation by the State and private companies is usually branded as anti-development and anti-national, and indigenous peoples' resistance to dispossession is often met with harassment, if not violent repression, by State security forces. As a result, some indigenous areas in South and South-East Asia are among the most heavily militarized regions in the world.

28. State laws and policies in Asia clearly favour private land ownership and corporate interests over communal land ownership and the well-being of indigenous communities. After decades of logging in indigenous peoples' forests, exploitation of resources on indigenous territories is currently focusing on mining and large-

scale commercial plantations for the production of, inter alia, rubber, cashew nuts, cassava or oil palm. While the demarcation and registration of indigenous communities' land — in countries where legal provisions for them actually exist — is usually a long, complicated and expensive process, Governments are very forthcoming in issuing logging, plantation and mining concessions for vast areas inhabited by indigenous communities. With few exceptions, attempts to seek legal recourse are frustrated because the judiciary in some Asian countries is still not independent, judges are insensitive and biased, or legal procedures are prohibitively expensive for poor indigenous communities.

## B. The challenges

29. In defence of their land and resources, indigenous communities are facing enormous challenges.

30. On the legal front, indigenous peoples in most Asian countries still have to fight for both their recognition as indigenous peoples and the recognition of communal land rights. They are usually confronted with a biased and corrupt judiciary, State administration and security apparatus, which often enjoy impunity.

31. On the political front, they are confronted with often violent repression of their attempts to organize themselves, and with corruption, intimidation, harassment or even the killing of their leaders. Their customary laws and institutions, including traditional leaders and councils, are not recognized and the State political-administrative system is imposed on them, thus undermining their own socio-political organization.

32. The knowledge, capacity, skills and financial resources needed for an effective engagement with the State political and judicial system, and for effective networking and mobilization in defence of their rights, are in most indigenous communities largely absent. Many also do not know how to engage with private companies or how to use the international legal instruments available.

33. Lack of self-confidence, cultural assimilation pressure, mainstream education, youth migration, proselytizing and other external forces are weakening existing customary institutions and are dividing the communities and generations, thus breaking down the unity of indigenous communities and peoples.

34. Increasing cash needs and integration into the market economy without the capacity to explore culturally, socially and ecologically appropriate alternatives in economic development force indigenous communities to engage in unsustainable land-use practices and a development process that increases economic dependence.

## C. Recommendations

35. In order to overcome the above-mentioned challenges in their struggle for the recognition of their communal land and resource rights, the participants in the Conference adopted the following recommendations addressed to United Nations and government agencies, and non-governmental and indigenous peoples' organizations.

**(a) Local level**

**Empowerment**

**Promote and support self-organizing and self-empowerment of indigenous communities and networking for mutual support and protection by:**

- **Raising awareness on existing laws and international human and indigenous rights instruments.**
- **Encouraging and supporting indigenous communities to make use of the national legal system and international instruments to protect their rights.**
- **Leadership training.**
- **Economic empowerment through exchange and mutual learning.**
- **Community mapping involving elders to solve land conflicts.**
- **Applying gender-sensitive approaches in all strategies for safeguarding indigenous peoples' control over land and resources.**

**Customary law**

- **Continue, revitalize and review traditional systems, customs and practices to adapt them to changing conditions and needs.**
- **Document indigenous peoples' customary laws and land and resource management systems.**

**(b) National level**

**Awareness-raising**

- **Engage and educate the media for systematic and sustained awareness-raising of the general public, Governments, legislators and private companies about indigenous peoples' issues.**
- **Engage communities directly in awareness-raising and education initiatives on indigenous peoples' issues.**

**Laws, policies and their implementation**

**Promote and call for:**

- **The constitutional and legal recognition of indigenous peoples.**
- **Legal reform, in particular with regard to the recognition of indigenous peoples' communal land rights, and the exploration of possibilities for alternative legal paradigms that are compatible with and recognize indigenous peoples' customary laws and institutions.**
- **National laws to conform with international laws.**
- **The establishment of land commissions that address violations of indigenous peoples' land rights, facilitate the restitution of alienated land and settle disputes.**
- **Legal provisions ensuring the inclusion of indigenous representatives in political decision-making bodies, for example the allocation of seats for**

indigenous representatives in parliaments, senates or other legislative bodies of the State.

- Donor policies on indigenous peoples to be applied in order to achieve legal and policy changes.
- The adoption of laws controlling investor activities and mitigating the negative impact of economic liberalization on indigenous peoples' territories.
- Full transparency in projects on indigenous territories by Governments and corporations, namely, the implementation of the principles and mechanisms of free, prior and informed consent, including the provision of information in a timely and appropriate manner, and in accordance with customary laws and practices of the respective indigenous peoples.
- The complete abandonment of transmigration policies and programmes, and the prevention of illegal migration to indigenous peoples' territories.
- The broadening of the mandate of national human rights commissions to fight violations of the rights of indigenous peoples.

Lobbying, advocacy and networking

Promote and support:

- The formation and strengthening of existing national networks and alliances among indigenous communities and their organizations for advocacy, mutual support and protection.
- Indigenous peoples' engagement with the Government to learn about procedures, mechanisms and tactics.
- Pilot projects demonstrating effective communal land management, with which to lobby the authorities.
- The use of environmental conservation discourse, laws and instruments, such as the Convention on Biological Diversity, to promote the rights of indigenous people to land and resources.
- Governments and the general public to value indigenous knowledge on natural resource management.

(c) International level

Lobbying, advocacy and networking

Promote and support:

- The use of international instruments and the promotion of indigenous peoples' rights, in particular the recognition of communal land rights.
- International campaigns and networking initiatives on indigenous peoples' land rights.
- The strengthening of existing networks and alliances of indigenous peoples' organizations in Asia and their organizations for advocacy, mutual support and protection.

- **Studies and campaigns on the principle of eminent domain as a continuation of colonial practices in present-day independent nations.**
- **Campaigns against large-scale commercial plantations, mining and mega-dams on indigenous territories.**
- **A discourse on development alternatives among indigenous peoples.**

**Laws, policies and their implementation**

**Promote and support:**

- **The development and proper implementation of policies on indigenous peoples by the European Union, United Nations agencies, the World Bank and the Asian Development Bank.**
- **A common policy for development agencies, giving priority to the recognition and protection of land rights and resource rights as a precondition for achieving the Millennium Development Goals for indigenous peoples.**

United Nations E/C.19/2007/7/Add.1

# Economic and Social Council

Distr.: General
15 March 2007
English
Original: Spanish

**Permanent Forum on Indigenous Issues**
**Sixth session**
New York, 14-25 May 2007
Item 3 of the provisional agenda*
**Special theme: "Territories, lands and natural resources"**

## Information received from non-governmental organizations in consultative status with the Economic and Social Council

**Fundación Servicio de Paz y Justicia, Argentina****

*Summary*

In Argentina there are 24 indigenous peoples whose history pre-dates the establishment of the national State. Argentina has a legal framework that recognizes the rights of indigenous peoples, but these rights have been subordinated to the neoliberal policies being implemented by the State. The situation of our lands, territories and natural resources is serious because the conditions for the effective exercise of our right to self-determination are not being established and there are continual cases of eviction and seizure of our lands and resources. Since late 2006, a change in the situation of our lands has been made possible by the adoption of a law that declares an emergency in indigenous community property rights. Depending on how it is implemented, this law will either legalize dispossession or will represent the starting point for finding a way to acknowledge our entitlement to territory and autonomy.

* E/C.19/2007/1.

** Contribution prepared by the Kolla people of the Tinkunaku indigenous community, Jujuy, and the Mapuche people of the Lonko Purrán indigenous community, Neuquén.

07-27142 (E) 020407 030407

# I. Indigenous peoples in Argentina

1. In Argentina there are 24 indigenous peoples organized in more than 900 rural communities. We speak 14 languages and make up 10 per cent of the population (4 million inhabitants). We are the Kolla, Mapuche, Toba-Q'om, Pilagá, Mocoví, Tehuelche, Ona-Selk'nam, Mbyá Guaraní, Wichí, Diaguita, Calchaquí, Huarpe, Tonocote, Rankulche, Chulupí, Chorote, Ava Guaraní, Tupí Guaraní, Chané, Tapiete, Charrúa and Comechingón peoples. Third parties profit from the biodiversity and the economic and geopolitical advantages of our lands and territories. Meanwhile, indigenous peoples are at great risk: basic needs are not met in 23 per cent of indigenous households and this exceeds the national average by almost 10 per cent. To ensure our physical, cultural and ideological survival, indigenous peoples require the territorial space that we have traditionally inhabited and our functional and territorial autonomy in the framework of the State.

# II. The main problems

2. Our proposal for self-determination is based on the constitutional recognition of our ethnic and cultural pre-existence. Argentina's Constitution provides that when it incorporates human rights treaties and treaties on the rights of indigenous peoples, those provisions acquire constitutional status (article 75, paras. 17 and 22). Nevertheless, the State does not recognize our political identity, and our lands, territories and natural resources are subordinated to the neoliberal policies that dominate the country's economic life.

## A. Our political identity as peoples

3. The main consequences of the denial of our identity as peoples are the lack of control over the use of our lands and resources, the imposition of a development model that is alien to our world view, the manipulation and subversion of our traditional institutions, the imposition of State authority over community authorities and the lack of real participation in issues that affect the life of our peoples.

4. The indigenous representative bodies established by Governments are fragmented and uncoordinated and thus lack the attributes of our identity as a people. An example of this is the establishment of indigenous institutes by provincial governments.

5. In 2006, the Council on Indigenous Participation was established to enhance cooperation between the indigenous peoples and the State. The Council will serve as a political actor for indigenous peoples if it can create real opportunities for political organization that allow for the implementation of a federal pact that reflects the political will to establish a multinational State.

## B. The situation of our lands and natural resources

6. The recent adoption of Law No. 26,610 on the emergency in indigenous community property rights, which was the result of the struggle of indigenous peoples and the reporting of violent evictions, has raised great expectations and

allowed for the possibility of change. Depending on how it is implemented, this law will either legalize dispossession or will represent the starting point for finding a way to acknowledge our entitlement to territory and autonomy. Until this is established, the situation is characterized by the problems described below.

7. Although the Constitution recognizes our community ownership of lands, in the last few years there has been an increase in eviction and seizure using violence and threats. For example, the Guaraní community of El Tabacal, Salta, was evicted by the multinational Seaboard Corporation with the complicity of the provincial government, and the Mapuche communities of Aluminé, Neuquén, were evicted and the Curiñanco-Nahuelquir family was dispossessed by Benetton in Chubut.

8. The Toba, Wichí and Mocoví peoples denounce the sale of lands by the government of the Province of El Chaco: 1,890,000 hectares have been sold and it is calculated that between 1.2 and 1.5 million hectares have been expropriated using absolutely illegal means. Plots of 2,500 hectares have been sold at 1.14 Argentine pesos per hectare.

9. In fulfilment of its constitutional responsibility, since 1996 the State has signed agreements with some provinces through the National Institute of Indigenous Affairs (INAI), including, inter alia, agreements concerning 245,000 hectares belonging to the Mapuche and Tehuelche communities in Chubut, 334,000 hectares in Río Negro and 1,293,000 hectares in Jujuy in which over 150 communities of the Kolla and Guaraní peoples live. In all cases, compliance is less than 10 per cent. In the Province of Jujuy, the courts penalized the provincial government for the delay and have ordered it to carry out the transfer within 15 months.

10. In the Province of Formosa, there are lands to which indigenous peoples hold title but which, because of the lack of land-use regulations and community oversight mechanisms, are subject to intrusions by settlers whose farming methods (cattle-grazing) are detrimental to the use of our resources.

11. Multinational companies are entering community territories with the consent of the State for oil exploration and exploitation. Repsol is invading and contaminating the ancestral territories of the Mapuche people in the Province of Neuquén. In Loma de la Lata, members of the Kaxipayiñ and Paynemil communities show alarming levels of poisoning as a result of the bioaccumulation of more than 17 heavy metals. This situation is being studied by the Inter-American Commission on Human Rights. Oil exploitation by other companies, including Pioneer, Apache and Pluspetrol, affects dozens of Mapuche territories, Wichí territories in the Department of Ramón Lista, Province of Formosa, and Guaraní territories in El Ramal, Jujuy.

12. Argentina has already lost 75 per cent of its native forests. It is calculated that some 250,000 hectares are lost each year, mainly in the region of El Chaco as a result of increased soy cultivation.[1] For those of us who live in the forests and whose livelihoods depend on the forests, this is a case of slow genocide. The increase in single-crop farming is as alarming as it is illegal and violates our right to food sovereignty. The Hoktek T'oi-Wichí community lodged an appeal for the invalidation of two administrative acts promulgated by the competent provincial authority which authorized the indiscriminate deforestation of community territory.

[1] Greenpeace Argentina, "Información sobre deforestación", 2006.

The highest Argentine court granted the appeal. However, the area most under threat from deforestation and increased single-crop soy farming comprises the territories of the Wichí communities in the basin of the Itiyuro River in the Province of Salta.

13. Mining is part of the private sector's ambitious plans to cover the entire Andean area. In November 2006, an important meeting of the indigenous communities of the Andean highlands was held in Abra Pampa, Jujuy. Open-pit mining was strongly rejected and we made a commitment to defend our territories and the right to promote development in accordance with our principles and world view.

## III. Recommendations[2]

14. **The following actions are recommended:**

(a) **Establishment of a register of indigenous peoples and territories with self-identified territorial boundaries, jurisdiction, competence and budget;**

(b) **Establishment of federal jurisdiction with respect to our rights;**

(c) **Implementation of an effective delimitation, demarcation and land titling procedure pursuant to the law on the emergency in indigenous community property rights;**

(d) **Implementation of constitutional guarantees on the management of our natural resources in all projects affecting them, with the requirement of free, prior informed consent;**

(e) **Implementation of a safeguard mechanism to ensure respect for and implementation of article 8 (j) of the Convention on Biological Diversity;**

(f) **Establishment of biosphere reserves and World Heritage sites or other sites with our consent, and control of existing sites by indigenous peoples;**

(g) **Declaration of an emergency with respect to the indiscriminate cutting of trees and the killing of animals in danger of extinction.**

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[2] Document issued by the National Forum: "Derecho de los pueblos indígenas en la política pública", 2005.

United Nations E/C.19/2007/8

# Economic and Social Council

Distr.: General
14 March 2007

Original: English

**Permanent Forum on Indigenous Issues**
**Sixth session**
New York, 14-25 May 2007
Item 4 of the provisional agenda*
**Implementation of recommendations on the six mandated areas of the Forum and on the Millennium Development Goals**

## Report of the international expert group meeting on the international regime on access and benefit-sharing and indigenous peoples' human rights of the Convention on Biological Diversity**

*Summary*

The present report provides an overview of the issues discussed at the international expert group meeting on the international regime on access and benefit-sharing and indigenous peoples' human rights of the Convention on Biological Diversity, held from 17 to 19 January 2007 at Headquarters in New York. Some of the issues examined included elements of customary law vested in traditional knowledge, indigenous peoples' participation in decision-making, human rights treaties, existing and other emerging instruments that are applicable to traditional knowledge, and the proposed certificate of origin, source or legal provenance for genetic resources.

* E/C.19/2007/1.

** The submission of the present report was delayed in order to ensure the inclusion of the most recent information.

07-26850 (E) 050407

# I. Introduction

1. At its fifth session, the Permanent Forum on Indigenous Issues recommended that the Economic and Social Council authorize a three-day international expert group meeting on the international regime on access and benefit-sharing and indigenous peoples' human rights of the Convention on Biological Diversity. At its resumed session in December 2006, the Council decided to authorize the expert group meeting with the participation of representatives from the United Nations system, five members of the Permanent Forum, other interested intergovernmental organizations, experts from indigenous organizations and interested Member States. It also requested that the results of the meeting be reported to the Permanent Forum at its sixth session in May 2007.[1] The meeting was organized by the secretariat of the Permanent Forum and held from 17 to 19 January 2007 at Headquarters in New York (see annex I).

# II. Organization of work

### Attendance

2. The following Permanent Forum members attended the meeting: Victoria Tauli-Corpuz, Hassan Id Balkassm, Eduardo Almeida, Pashuram Tamang, Ida Nicolaisen and Merike Kokajev.

3. The following invited experts participated in the meeting: Clark Peteru (Pacific), Sem Shikonga (Africa), Mattias Ahren (Arctic), Yolanda Teran (Central and South America and the Caribbean), Erjen Khamaganova (Eastern Europe, Russian Federation, Central Asia and Transcaucasia), Joji Carino (Asia), Merle Alexander (North America).

4. The meeting was attended by observers from United Nations departments, agencies, funds and programmes, observers from other intergovernmental organizations, non-governmental organizations and Member States (see annex II).

### Documentation

5. The participants had before them a draft programme of work and documents prepared by participating experts. The documentation is available on the website of the secretariat of the Permanent Forum (www.un.org/esa/socdev/unpfii/en/workshops.html).

### Opening of the meeting

6. At the opening of the meeting, the Assistant Secretary-General for Economic Development, Jomo Sundaram, on behalf of the Under-Secretary-General for Economic and Social Affairs, made an opening statement.

[1] *Official Records of the Economic and Social Council, 2006, Supplement No. 23* (E/2006/43), chap. I.A, draft decision I.

**Election of officers**

7. The Chairperson of the Permanent Forum, Victoria Tauli-Corpuz, was elected Chairperson of the meeting. John Scott of the secretariat of the Convention on Biological Diversity was elected rapporteur.

**Adoption of conclusions and recommendations**

8. On 19 January 2007, the participants in the meeting adopted, by consensus, the conclusions and recommendations contained in section III below.

**Closure of the workshop**

9. The meeting was closed after the conclusions and recommendations were adopted at the final plenary meeting, held on 19 January 2007.

## III. Highlights of the discussion

10. In the discussions held during the course of the meeting, the participants examined various issues specific to indigenous peoples and the development of the international regime on access and benefit-sharing of the Convention on Biological Diversity. Some of the issues discussed included, but were not limited to, elements of customary law that are vested in traditional knowledge protection and transmission; an analysis of indigenous participation, including the levels and roles in decision-making; human rights treaties and other existing or emerging instruments that are applicable to traditional knowledge and genetic resources; options and opportunities in the proposed certificate of origin, source or legal provenance for genetic resources; and the role of customary law in the protection of traditional knowledge and development of regimes on access to genetic resources and benefit-sharing.

11. At the commencement of the meeting, the experts provided an overview of policies on the access and benefit-sharing provisions of the Convention on Biological Diversity, as well as examples of such arrangements at the national and local levels. The provisions include the Bonn Guidelines which were developed to assist Governments and stakeholders in establishing legislative, administrative or policy measures on access and benefit-sharing and in negotiating contractual arrangements.

12. The experts explained that the terms of reference for negotiating an international access and benefit-sharing framework within the Convention require a gap analysis, but remain open-ended as to whether there should be one or more instruments that could be legally binding or non-binding regarding access to genetic resources and the sharing of benefits. The terms include the consideration of possible elements of the regime, such as measures to facilitate access, measures to ensure compliance with free, prior and informed consent, mutually agreed terms and protection of traditional knowledge, and others.

**Human rights**

13. One expert pointed out that early human rights laws were influenced by theories of liberalism and the rights of the individual. The absence of provisions protecting the rights of collectivities are evident in, among others, the Universal

Declaration of Human Rights, adopted and proclaimed by the General Assembly in its resolution 217 (A) III of 10 December 1948, and Convention No. 107 of the International Labour Organization (ILO), which took an assimilationist approach and did not protect indigenous peoples as distinct ethnic entities. It was during the 1980s that a change occurred towards communitarianism, the result of a new approach taken by liberal States to ethnic groups and their issues, including indigenous peoples. The emergence of communitarianism, or what is now known as "multiculturalism", is mirrored in international law and evident in ILO Convention No. 169 and other covenants and conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.

14. The draft declaration on the rights of indigenous peoples, adopted by the Human Rights Council in June 2006 and currently awaiting adoption by the General Assembly, confirms established international law. Several articles of the draft declaration highlight, in particular, the right of indigenous peoples to control, protect and develop their cultural heritage, including traditional knowledge, and the right to their lands and natural resources.

15. The recent changes in international human rights law may also be reflected in the right to self-determination in that it can be broadly interpreted to apply not only to the inhabitants of a State or territory but also to non-State forming peoples.[2] There is a long-held belief that the right to self-determination can also apply to indigenous peoples, who have the right to determine their models of development and the use of their lands and natural resources. However, the Convention on Biological Diversity only makes reference to State sovereign rights with regard to the exploitation of natural resources and the responsibility for determining access to genetic resources and associated traditional knowledge. It does not specify to what extent this sovereign right can extend to indigenous peoples who traditionally occupy the lands and resources within a State.

16. Regarding the development of an international regime on access and benefit-sharing, participants emphasized that such a regime, whether it be a legally or non-legally binding instrument, should conform to internationally recognized human rights laws, including indigenous peoples' collective rights. Furthermore, the concept of free, prior and informed consent should be included as an important part of an international regime on access and benefit-sharing, not only as a methodology, but also as a principle in addition to international human rights standards.

17. By virtue of their right to self-determination, indigenous peoples should be able to say whether or not they support an international regime on access and benefit-sharing; if they do support such a regime, they should have input in its development. Participants agreed that regardless of the form of the international regime or agreement within the Convention framework, it should guarantee the

[2] That the interpretation of international legal provisions evolves over time is fully consistent with international law. Pursuant to article 31 of the Vienna Convention on the Law of Treaties, subsequent practice constitutes the primary source when interpreting a provision contained in an international treaty; see United Nations, *Treaty Series*, vol. 1155, p. 331. Preparatory work before the adoption of a treaty — and States' position at that time — are merely secondary sources when interpreting the international instrument in question; they are relevant only to the extent that no subsequent practice exists that can guide the interpretation of a particular provision (see www.un.org/esa/socdev/unpfii/documents/workshop_CBDABS_mahren_en.doc).

protection of indigenous peoples' rights in accordance with international human rights standards. It was also stressed that the recognition of indigenous peoples' collective rights would be an important condition in terms of fulfilling their human rights as peoples.

**Sovereignty**

18. While the Convention framework clearly defines State sovereignty over the biological and genetic resources within national borders, indigenous experts expressed the view that an analysis of relevant international law and State practices, as well as the views expressed by indigenous peoples in various international forums, have confirmed indigenous peoples' right to own, use, control and manage their lands, territories and natural resources. These developments reflect the trend of greater recognition of indigenous peoples' right to maintain authority over their lands, territories and resources, as well as their decision-making powers, as set out in customary law practices, on the use and development of those resources. In addition, participants made reference to the study on the sovereignty of indigenous peoples over natural resources by the Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/2004/30), which provided an in-depth understanding of the sovereignty of indigenous peoples.

19. Participants provided examples of indigenous participation in negotiations on the use of natural resources, whether or not associated with traditional knowledge. In instances where indigenous peoples have not been able to participate in those negotiations as equal partners with outsiders, such as the State or the private sector, it has been extremely difficult to exercise their sovereign rights over natural resources. Hence, the recognition of the sovereignty of indigenous peoples over their resources can guarantee the establishment of genuine partnerships between indigenous peoples and others, particularly when negotiating issues that affect them as communities and as peoples.

20. It was also stated that the interpretation of sovereignty may vary from region to region; this also depends on how sovereignty is exercised in a given country. When democracy is lacking in the political process, indigenous peoples are absent from State policymaking processes; their rights over their lands, territories and natural resources are also undermined, which in turn affects the realization of their rights.

**Participation**

21. The participation of indigenous peoples in discussions concerning traditional knowledge has been enhanced by the Conference of the Parties, as is evidenced at meetings held under the Convention.

22. The experts emphasized that the current Convention processes hold many challenges for indigenous peoples because of lack of funding and information; documentation prepared by non-governmental organizations and the indigenous caucus is in fact not available in some languages (for example, Russian). In terms of participation, indigenous peoples are mainly relegated to article 8 (j) meetings and can only attend other meetings on the Convention as observers.

23. There is an expectation at some meetings held under the Convention that indigenous peoples will speak with one voice and have one specific position. Such a

situation is highly unlikely, considering the fact that indigenous peoples represent a diversity of regions and positions. Measuring indigenous peoples' participation in Convention processes is another challenge, because it does not necessarily reflect the number of indigenous participants and the search for one indigenous voice and one point of view. This issue was discussed at length with some participants, who agreed that it was important to speak with one voice, because having too many voices and positions can sometimes undermine the strength of negotiations.

24. At present there is no emphasis on regional groups and their perspectives in discussions on access and benefit-sharing. The same mistake is being made at the national level, where there might be opportunities for indigenous peoples to negotiate directly with States on national legislation and when developing regional positions.

25. There are currently few mechanisms that promote emphasis on gender, youth or elders, though there is a strong indigenous women's advocacy group in Convention processes. There are, however, some concerns in respect to involving indigenous youth and elders in the discussions in Convention processes, because discussions have become highly legalistic, political and scientific. Hence, there is a need for capacity-building to allow many of the traditional knowledge holders to become more involved in negotiation processes.

26. Unfortunately, there has been a lack of empowerment at both the national and international levels for youth and elders to participate in Convention processes. There is however, an important role for indigenous youth to play at the local level, working closely with elders in collecting, protecting and maintaining traditional knowledge. These activities are important in bridging the gap between youth and elders. The recording and presentation of case studies may be another way of representing the voices of youth and elders.

**Customary law**

27. One expert provided a brief overview of customary laws relating to the preservation, transmission, maintenance and development of traditional knowledge. These include the local systems of laws, norms, taboos and regulations that have been devised to keep social order and maintain continuity of cultural practices.

28. Traditional knowledge can exist only in a particular place in a particular community, related to particular circumstances of the environment and livelihoods. Therefore, issues of preservation, maintenance and development of traditional knowledge are relevant to human rights, including rights to land and the right to self-determination. Although traditional knowledge is, by definition, often local and even place-specific, it has now become a global issue. This fact is reflected in the attitudes of indigenous communities, which are not uniform and reflect various competing and often conflicting values. Under such conditions, it is very difficult to reach a shared understanding of traditional knowledge, the degree of its salience and the dangers and benefits of it becoming uniform, standardized and commercialized. Unless there is a common understanding and reconciliation of conflicting values, the disappearance of the indigenous traditional knowledge, on which the identity, cultural and physical survival of many indigenous communities around the world depend, may be inevitable.

29. One way of reaching a shared understanding of the concepts of traditional knowledge is for States and other stakeholders to accept and respect the traditional customary laws and practices of indigenous peoples. Traditional knowledge includes a system of locally devised rules, norms, taboos and regulations, which are the means to keep social order and maintain continuity over time, and are consistent with the values of society. Hence, customary law is a key qualifier of traditional knowledge and needs to be understood.

30. The underlying philosophical principles of customary law cannot be ignored. They include the principles of reciprocity; of restoring harmony and balance; of peaceful conflict resolution; and of flexibility and adaptability to the dynamics of the environment.

31. Indigenous peoples and communities possess concrete rules and practices regarding access to and protection of their traditional knowledge and resources. In some instances, indigenous peoples do not hide their knowledge and genetic resources from others, because in many cases the benefit of their use is obvious. However, a fundamental requirement must be met, namely the requirement of recognition of and guarantees for the continuation of traditional principles of norms, customary law and the pedagogical methods of access to and transfer of that knowledge.

**Certificates of origin**

32. Participants pointed out that the main objective of an internationally recognized system of certificate of origin, source or legal provenance is to ensure the traceability of genetic resources from the collection phase through to the marketing of a resulting product. Such a tool could help to ensure compliance with access and benefit-sharing provisions of the Convention and provide assurance that requirements related to the legal acquisition of the genetic resources in the country of origin or provider country have been met.

33. The aim of such a certificate would be twofold: to assist providers in ensuring that the resources are used in conformity with their national access requirements; and to provide legal certainty and predictability for users of genetic resources who have obtained a certificate through competent national authorities or those who have acquired the genetic resources from an earlier receiver. The system would therefore contribute to building trust and fostering cooperation among users and providers of genetic resources.

34. In order to protect the rights of indigenous peoples, the proposed certificate of origin, source or legal provenance covers two types of genetic resources: genetic resources without associated traditional knowledge; and genetic resources and associated traditional knowledge. There is concern that the separation between genetic resources and associated traditional knowledge will break the essential link between the physical resource and the intangible resource, and potentially exclude traditional knowledge from the certificate. Hence, the appropriate references should clearly state "genetic resources" and "genetic resources and associated traditional knowledge".

35. Traditional knowledge also embodies property rights and cultural rights of indigenous peoples and adds value to genetic resources; therefore, indigenous peoples and their communities who are the rights-holders over genetic resources and

associated traditional knowledge need to be identified, in order to share in the benefits arising from its utilization. With regard to claims that it is difficult to identify the appropriate indigenous communities and traditional knowledge associated with genetic resources, the local/subnational geographical areas from which the genetic resource has been derived must be identified in the proposed certificate of origin, source or legal provenance.

36. The elaboration and adoption of community protocols and codes of conduct regarding research, bioprospecting and other uses of traditional knowledge would result in greater understanding of access and benefit-sharing issues for indigenous peoples, and would also facilitate the operational implementation of an international regime on access and benefit-sharing, including an internationally recognized certificate of origin, source or legal provenance.

37. National legislation addressing sui generis protection of traditional knowledge, innovation and practices would also help in ensuring compliance with national legislation and an international access and benefit-sharing regime.

# IV. Conclusions and recommendations

38. Participants in the expert group meeting concluded that international human rights law affirms indigenous peoples' human rights, including cultural rights and rights to lands, waters, territories and natural resources, genetic resources and traditional knowledge. They also concluded that an international regime on access and benefit-sharing developed within the framework of the Convention must not be in violation of those rights. Consequently, the parties to the Convention are legally obliged to guarantee that any international regime recognizes and respects those rights.

39. It was also concluded that, while States hold sovereign rights to natural resources within their borders, those rights are relevant only in relations between the State and external legal subjects, such as other States and foreign corporations. Hence, the principle of State sovereignty offers no guidance as to the relationship of a State vis-à-vis peoples and individuals residing within its borders with regard to rights to genetic resources and associated traditional knowledge. It was concluded that peoples hold sovereign rights to natural resources within their territories; the parties to the Convention are bound to respect those rights, despite language on State sovereignty and references to domestic legislation contained in the Convention.

40. Participants in the meeting provided many examples of the issues that arise in negotiating access and benefit-sharing arrangements at the national and local levels, and concluded that the lack of adequate resources for indigenous peoples to engage in effective participation in the international access and benefit-sharing process was an obstacle to effective outcomes for indigenous peoples. It was also noted that developing such arrangements at the national and local levels also presents its own set of issues, such as States asserting ownership of genetic resources on indigenous lands and territories. In addition, indigenous peoples often lack the technical skills to negotiate access and benefit-sharing arrangements with outside interests.

41. At the meeting, it was concluded that access and benefit-sharing arrangements were particularly complex in situations characterized by a diversity of indigenous

peoples' voices and in which different indigenous groups use the same genetic resource in a variety of ways. There were also discussions on transboundary issues, which may result in bioprospecting companies exploiting certain groups to obtain the arrangements that best suit their needs, including those indigenous groups in countries that do not have access and benefit-sharing arrangements in place.

42. Participants in the meeting emphasized the need to further enhance indigenous peoples' rights to participate in Convention meetings. Thematic enhancements for indigenous peoples' participation included involvement in the development of national access and benefit-sharing legislation and the development of regional and national positions concerning an international regime on access and benefit-sharing; improved facilitation of coordination between the Working Group on article 8 (j) and the Working Group on Access and Benefit-sharing; establishment of an indigenous expert group as a mechanism of coordination between the two groups; and improved participation of indigenous peoples from the seven geocultural regions defined by the Permanent Forum.

43. It was emphasized that principles of customary law include reciprocity, restoring harmony and balance, and conflict resolution. It was concluded that obstacles to indigenous peoples' participation in the development of national laws on access and benefit-sharing often arise when existing customary laws, norms and cultural practices of indigenous peoples and communities are overlooked. Indigenous peoples are also excluded because they often lack experience and information in dealing with outside interests and are unable to articulate their positions in non-indigenous languages.

44. It was emphasized that indigenous peoples' principles of customary legal systems relevant to genetic resources and traditional knowledge constitute sui generis systems for managing such resources and knowledge. It was furthermore noted that indigenous peoples hold collective rights to genetic resources and associated traditional knowledge, and that those rights have to be managed in accordance with the relevant peoples' legal customs. It was concluded that the parties to the Convention must respect indigenous peoples' customary legal systems in their deliberations, including in the elaboration of an international regime on access and benefit-sharing.

45. Participants in the meeting discussed the proposed certificate of origin, source or legal provenance and concluded that the integral link between genetic resources and associated knowledge must be maintained in the certificate in order to protect the rights of indigenous peoples and to ensure their share in any benefits arising from the utilization of genetic resources and associated traditional knowledge. It was emphasized that indigenous peoples' free, prior and informed consent must be upheld in national, regional and international instruments on access and benefit-sharing.

46. At the meeting, it was concluded that traditional knowledge enhances the value of biological and genetic resources that have been nurtured and transmitted by indigenous peoples for thousands of years. The value added by traditional knowledge should be fully acknowledged in the development of a certificate of origin, source or legal provenance, as well as in arrangements concerning access to genetic resources and associated traditional knowledge, in research and development, patent applications and commercial development. Community-controlled registers of biological resources and associated traditional knowledge and

community protocols on access and benefit-sharing could be important tools to complement such a certificate.

## A. General recommendations

47. The experts participating in the meeting:

(a) Emphasized the need to recognize, respect and protect indigenous peoples' cultural rights and their right to participate in all matters that affect them, and urged parties to recognize indigenous rights to lands, waters, territories and natural resources, including genetic resources, as well as associated traditional knowledge and custodianship over biodiversity.

(b) Urged the General Assembly to adopt the draft declaration on the rights of indigenous peoples, as soon as possible and no later than the sixty-first session, as a basis for indigenous peoples' rights in the negotiations on an international regime on access and benefit-sharing.

(c) Recognizing that the right of self-determination applies to all peoples, called on parties to respect the free, prior and informed consent of indigenous peoples regarding access to genetic resources and associated traditional knowledge originating in the lands, waters and territories of indigenous peoples.

(d) Urged parties in their elaboration and negotiation of an international regime on access and benefit-sharing to recognize, respect and protect the rights of indigenous peoples in all aspects of the regime, and take into account and complement the work of other organizations, such as the work of the World Intellectual Property Organization (WIPO) in relation to the intellectual property aspects of access and benefit-sharing and the protection of traditional knowledge.

(e) Recognized that 2010 had been declared the International Year of Biodiversity and that indigenous peoples, as the custodians of the Earth's biodiversity, should be major players in actions planned for 2010, and in that spirit called for close cooperation between the Convention on Biological Diversity and the Permanent Forum on Indigenous Issues to promote the International Year of Biodiversity and highlight the role of indigenous peoples as custodians of biodiversity.

(f) While recognizing that States hold sovereign rights to natural resources within their borders, underlined that that right was relevant only in relations between the State and external legal subjects, such as other States and foreign corporations; hence, it noted that the principle of State sovereignty offered no guidance as to the relationship of a State vis-à-vis peoples and individuals residing within its borders with regard to rights to genetic resources and traditional knowledge. It also recalled that peoples too hold sovereign rights to natural resources within their territories.

(g) Noting that community-based natural resource management supports all three objectives of the Convention and furthers the parties' obligations under article 8 (j) and 10 (c) and is the most effective form of environmental protection, urged parties to recognize the role of Government in coordinating local natural resource management and conservation at the national level with the full and effective

participation of indigenous peoples. Furthermore, that principle should also apply to access and benefit-sharing arrangements.

(h) Recognized that in situ conservation, including access and benefit-sharing arrangements, when implemented at the community level, would provide an opportunity for indigenous peoples to choose whether or not to commercialize their traditional knowledge and genetic resources.

(i) Welcomed the openness of meetings held under the Convention, including the notification process which allows for the submission of views and documentation to the secretariat of the Convention so that they are taken into account in the preparation of meeting documents, as useful mechanisms to assist effective participation of indigenous peoples.

(j) Invited the Permanent Forum to transmit the report of the expert group meeting to the Executive Secretary of the Convention on Biological Diversity as an information document for the meetings of the open-ended Working Group on Access and Benefit-sharing and the open-ended Working Group on Article 8 (j) and Related Provisions, to be presented during the discussion of the relevant agenda item at those meetings.

(k) Invited the secretariat of the Permanent Forum, in cooperation with the secretariat of the Convention, to organize a side-event on the occasion of the fifth meeting of the open-ended Working Group on Access and Benefit-sharing of the Convention, as an occasion for the co-Chairs of the Working Group, representatives of States parties and other interested groups to consider the conclusions and recommendations of the expert group meeting and the views of indigenous peoples on an international regime on access and benefit-sharing.

(l) Invited the Permanent Forum to discuss the report of the expert workshop at its sixth session in May 2007, and to make appropriate recommendations to Governments, international and regional organizations and indigenous peoples based on the conclusions of the meeting.

(m) Invited indigenous peoples to compile case studies about local and national experiences relevant to the proposed international regime on access and benefit-sharing and sui generis protection of traditional knowledge, and to make them available to the Executive Secretary of the Convention for inclusion in the documentation for the Working Group on Access and Benefit-sharing.

(n) Recommended the development of regional approaches with the full and effective participation of indigenous peoples to address transboundary issues associated with access and benefit-sharing of genetic resources, the protection of traditional knowledge and the development of an international regime.

(o) Invited the Permanent Forum to prepare a legal analysis on States, peoples and sovereignty and their relationship, scope and application, to assist the parties to the Convention in understanding sovereignty in the context of the Convention and the role of sovereignty in developing an international regime of access and benefit-sharing.

(p) Invited the Permanent Forum to cooperate with the Executive Secretary of the Convention and the United Nations Educational, Scientific and Cultural Organization (UNESCO) to explore synergies concerning the protection of traditional knowledge, in the light of the UNESCO Convention for the Safeguarding

of the Intangible Cultural Heritage (2003) and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

(q) Urged parties to ensure that protection, including the sui generis protection of traditional knowledge, was provided in parallel with the completion and adoption of an international regime on access and benefit-sharing of genetic resources.

(r) Urged parties to recognize customary laws of indigenous peoples relevant to genetic resources and traditional knowledge and to consider the development of sui generis systems based on such customary laws, as appropriate, for the protection of traditional knowledge and access and benefit-sharing of genetic resources and associated traditional knowledge.

(s) Urged parties and all stakeholders to fully consider the rights and interests of indigenous peoples living in voluntary isolation and indigenous peoples with small and vulnerable populations regarding the recognition, respect and protection of their traditional knowledge and the development of an international regime on access and benefit-sharing.

(t) Urged parties to consider the limitations of the Convention regarding the high seas and genetic resources, which fall outside the scope of the Convention, and the difficulties that could arise in developing an international regime on access and benefit-sharing of transboundary genetic resources, which may fall both within national jurisdictions and in areas beyond national jurisdiction including on the high seas and the deep seabed.

## B. Specific recommendations

### Effective participation

48. The expert group furthermore:

(a) Urged indigenous peoples to be active at the national level in developing national legislation on access and benefit-sharing and other sui generis systems for the protection of traditional knowledge and genetic resources.

(b) Urged the parties and other Governments to include indigenous peoples in negotiating regional positions in the context of the development of an international regime on access and benefit-sharing.

(c) In order to strengthen regional approaches and coordination on an access and benefit-sharing regime, urged indigenous peoples and Governments in Asia to maximize exchanges of information and dialogue during the planned workshop on biodiversity organized by the United Nations Development Programme Regional Initiative on Strengthening Policy Dialogue on Indigenous, Highland and Tribal Peoples' Rights and Development. Similar events should be held in other regions.

(d) Encouraged indigenous peoples' organizations, including the International Indigenous Forum on Biodiversity, to establish an informal, open-ended indigenous expert group on access and benefit-sharing and article 8 (j) prior to the fifth meeting of the Working Group on Access and Benefit-sharing, to analyse, review and provide input directly to the processes of the Working Group on Article 8 (j) and the Working Group on Access and Benefit-sharing, and to provide

advice directly to the Working Group on Access and Benefit-sharing as a useful mechanism to increase cooperation and coordination between the two working groups. In particular, the Group on Access and Benefit-sharing should analyse developments in the elaboration and negotiation of an international regime on access and benefit-sharing throughout all relevant processes, namely the Working Group on Access and Benefit-sharing, the Working Group on Article 8 (j), the Conference of the Parties and any other specialized subsidiary groups.

(e) Recommended that parties support the work of the indigenous expert group with adequate resources to, among other tasks, critically analyse the nature, scope, objectives and possible elements of an international regime on access and benefit-sharing, and provide direct advice to the Working Group on Access and Benefit-sharing.

(f) Recommended that parties continue to enhance participatory mechanisms by ensuring that diverse regional views of indigenous peoples were reflected in discussions. In particular, the parties were urged to ensure adequate representation of indigenous peoples from the seven geocultural regions and subregional levels in the Working Group on Access and Benefit-sharing and that they are provided with opportunities to express diverse regional and subregional views.

(g) Noting the progress made in establishing the Traditional Knowledge Information Portal, urged the Executive Secretary to fully operationalize the Portal to further facilitate effective participation of indigenous peoples through the provision of electronic communication mechanisms.

**Coordination**

(h) Recommended that the notification process of the Convention on Biological Diversity encourage indigenous peoples and other interested bodies to provide information that could assist the Executive Secretary in completing a gap analysis to include potential disparities between the Convention, regional trade agreements, the World Trade Organization, the Trade-Related Intellectual Property System and the International Union for the Protection of New Varieties of Plants, in a timely fashion, fully taking into account indigenous views and a comprehensive understanding of existing human rights arrangements, and to transmit the results to the fifth meeting of the Working Group on Access and Benefit-sharing.

(i) Recommended that technical reviews be conducted at critical stages in the negotiation and development of an international regime on access and benefit-sharing by relevant United Nations agencies and other specialist bodies, such as the Permanent Forum on Indigenous Issues, WIPO, the Office of the United Nations High Commissioner for Human Rights, the World Bank and the Food and Agriculture Organization of the United Nations, and through such mechanisms as the Inter-Agency Support Group for the Permanent Forum on Indigenous Issues, to ensure that negotiated instruments are in harmony with existing and developing international legal instruments, standards and arrangements and, in particular, take into account the rights already ensured by existing human rights law and instruments.

(j) Urged the Convention, in line with United Nations reform measures, to apply the human rights approach to development, including in the development of an international regime on access and benefit-sharing.

(k) Invited the Convention, the Permanent Forum, the Inter-Agency Support Group and appropriate agencies to cooperate to support indigenous networks and disseminate information, in appropriate and accessible languages, and through appropriate media, to indigenous communities to build capacity and awareness of Convention-related matters.

**Capacity-building**

(l) Urged the secretariat of the Permanent Forum to cooperate with the Convention secretariat to develop the Traditional Knowledge Information Portal, which will include a database of indigenous experts who could assist indigenous peoples in capacity-building concerning the environment, the Convention and in specific areas, such as the protection of traditional knowledge and access and benefit-sharing of genetic resources and associated traditional knowledge.

(m) Requested the Executive Secretary to increase capacity-building opportunities for indigenous peoples, recognizing the role of elders, women and youth in traditional knowledge transmission, and to provide capacity-building opportunities that include skills needed in negotiating with outside interests.

(n) Encouraged the secretariat of the Convention to work in partnership with the secretariat of the Permanent Forum to organize regional workshops for the purposes of information exchange and capacity-building among governments, indigenous and local communities and other stakeholders with regard to access and benefit-sharing of genetic resources and the proposed international regime on access and benefit-sharing.

(o) Recommended that indigenous organizations use the documents from the expert group meeting and other relevant meetings to produce concise briefing notes on various elements of the proposed international regime on access and benefit-sharing to inform all participants of the meetings of the open-ended Working Groups on Access and Benefit-sharing and Article 8 (j) and Related Provisions.

**Other issues**

(p) Recalling decision 16 of the Conference of the Parties at its fifth session on tasks of the second phase of the programme of work for the implementation of article 8 (j),[3] instructing "the ad hoc Working Group to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity", recommended that those guidelines apply a broad interpretation of repatriation to include biological and genetic resources, all of which are integral to the cultural heritage of indigenous peoples.

(q) Welcomed the establishment of the voluntary fund for indigenous and local community participation in meetings held under the Convention and urged donors to provide funds to the newly established voluntary fund, targeted at the participation of indigenous and local communities in access and benefit-sharing processes.

[3] See www.biodiv.org/decisions, decision V/16, Programme of work on the implementation of article 8 (j) and related provisions of the Convention on Biological Diversity, sect. III, element 3, task 15.

# Annex I

## Programme of work

**Wednesday, 17 January**

*10-10.30 a.m.*

Opening of the workshop by the Assistant Secretary-General for Economic Development, Mr. Kwame Sundaram Jomo

**Item 1** **Election of Chairperson and Rapporteur**

**Item 2** **Adoption of agenda and organization of work**

*10.30 a.m.-1 p.m.*

**Item 3** **International standards and policies on agreement-making with reference to indigenous peoples**

- Analysis of international standards and recommendations concerning the rights of indigenous peoples (Convention on Biological Diversity, Human Rights Committee, Commission on Human Rights, Permanent Forum on Indigenous Issues, the International Labour Organization and others) relevant to the development of an international regime on access and benefit-sharing
- Analysis of private sector companies and donor policies on access and benefit-sharing arrangements, with special reference to indigenous peoples
- Analysis of how the goals and needs of indigenous peoples in access and benefit-sharing arrangements differ from the needs and goals of other interested holders, especially in the Convention on Biological Diversity processes

*Opening presentations*

Mr. John Scott

Mr. Sem Shikonga

*3-6 p.m.*

**Item 4** **Areas in which indigenous peoples' participation is relevant to any access and benefit-sharing arrangements**

- Analysis of mechanisms for representation and effective participation with regard to gender, youth, elders and other knowledge holders
- Analysis of indigenous peoples' perspectives with regard to targets and indicators used in access and benefit-sharing processes, as well as budgetary concerns that affect indigenous peoples' participation
- Analysis of effective participation of indigenous peoples in implementing, monitoring and evaluating access and benefit-

sharing plans, with particular reference to Convention processes

- Suggestions on how to bridge the gap between the theories of access and benefit-sharing arrangements and actual tools and practices needed to strengthen or build the effective participation of indigenous peoples in the negotiation processes of the Convention

*Presentations*

Mr. Merle Alexander

Mr. Mattias Ahren

**Thursday, 18 January**

*10 a.m.-1 p.m.*

**Item 5** **Factors that enable or obstruct indigenous peoples' participation in the Convention processes**

- Effective participation in decision-making at the national level
- Public access to information on access and benefit-sharing agreement-making
- Accountability and integrity in decision-making and implementation of policies at the international and national levels in regard to Convention process
- Access to the legal and judicial systems to formulate and negotiate access and benefit-sharing arrangements
- Obstacles, including lack of relevant statistics, lack of information and lack of understanding of technical and legal language of access and benefit-sharing arrangements
- The role of the private sector in policy, legislation reforms and in defining access and benefit-sharing regimes and how this affects indigenous peoples
- Focus on the persistent barriers that block indigenous peoples' effective participation in the Convention process
- The role of the donor community and the private sector in enhancing or weakening indigenous peoples' participation in the Convention process

*Presentations*

Ms. Erjen Khamaganova

Ms. Yolanda Teran

*3-6 p.m.*

**Item 6** **Good examples of indigenous participation in negotiating access and benefit-sharing processes in other arenas**

- Within the United Nations system and other intergovernmental organizations
- Highlight and provide case studies of partnerships that currently exist between Governments, private sector companies, donor agencies and indigenous peoples in national, regional or local access and benefit-sharing agreements
- Provide examples of the impact of equal participation of indigenous women, men, youth, elders and other knowledge holders in the access and benefit-sharing processes in achieving the goal of sustainable development

*Presentations*

Mr. Clark Peteru

Ms. Joji Carino

Mr. Benoît Gauthier on behalf of the Government of Canada

**Friday, 19 January**

*10 a.m.-1 p.m.*

**Item 7** **Strategies to identify gaps and challenges and a possible way forward**

*3-6 p.m.*

**Item 8** **Conclusions and recommendations**

# Annex II

## List of participants

**Members of the Forum**

Ms. Victoria Tauli-Corpuz
Mr. Hassan Id Balkassm
Mr. Eduardo Almeida
Mr. Pashuram Tamang
Ms. Ida Nicolaisen
Ms. Merike Kokajev

**Invited experts**

Mr. Clark Peteru (Pacific)
Mr. Sem Shikonga (Africa)
Mr. Mattias Ahren (Arctic)
Ms. Yolanda Teran (Latin America and the Caribbean)
Ms. Erjen Khamaganova (Russian Federation, Central Asia and Transcaucasia)
Ms. Joji Carino (Asia)
Mr. Merle Alexander (North America)

**United Nations system**

Secretariat of the Convention on Biological Diversity
Economic and Social Commission for Asia and the Pacific
United Nations Environment Programme
United Nations Educational, Scientific and Cultural Organization
World Intellectual Property Organization
World Bank

**Other intergovernmental organizations**

International Organization for Migration
African Union
Delegation of the European Commission to the United Nations in New York

**Non-governmental organizations**

FAIRA Aboriginal Corporation, Australia
Indigenous Peoples Council on Biocolonialism
Call of the Earth Llamado de la Tierra
Federación Interprovincial de los Centros Shuar, Ecuador
Indigenous World Association
Association of the Indigenous Peoples of the Far North, Siberia and Far East of the Russian Federation (RAIPON)
ALMACIGA Grupo de Trabajo Intercultural, Spain
Netherlands Centre for Indigenous Peoples
Tribal Link Foundation, New York
International Union for the Conservation of Nature
Universiteit Leiden, Netherlands
International Working Group for Indigenous Affairs

**Countries**

Brazil
Bolivia
Canada
Colombia
France
Guatemala
Indonesia
Japan
Mexico
Panama
Papua New Guinea
Russian Federation
Spain
United States of America
Venezuela (Bolivarian Republic of)